



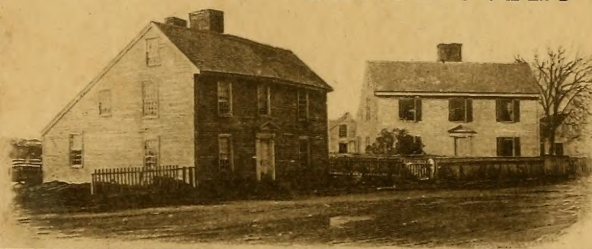


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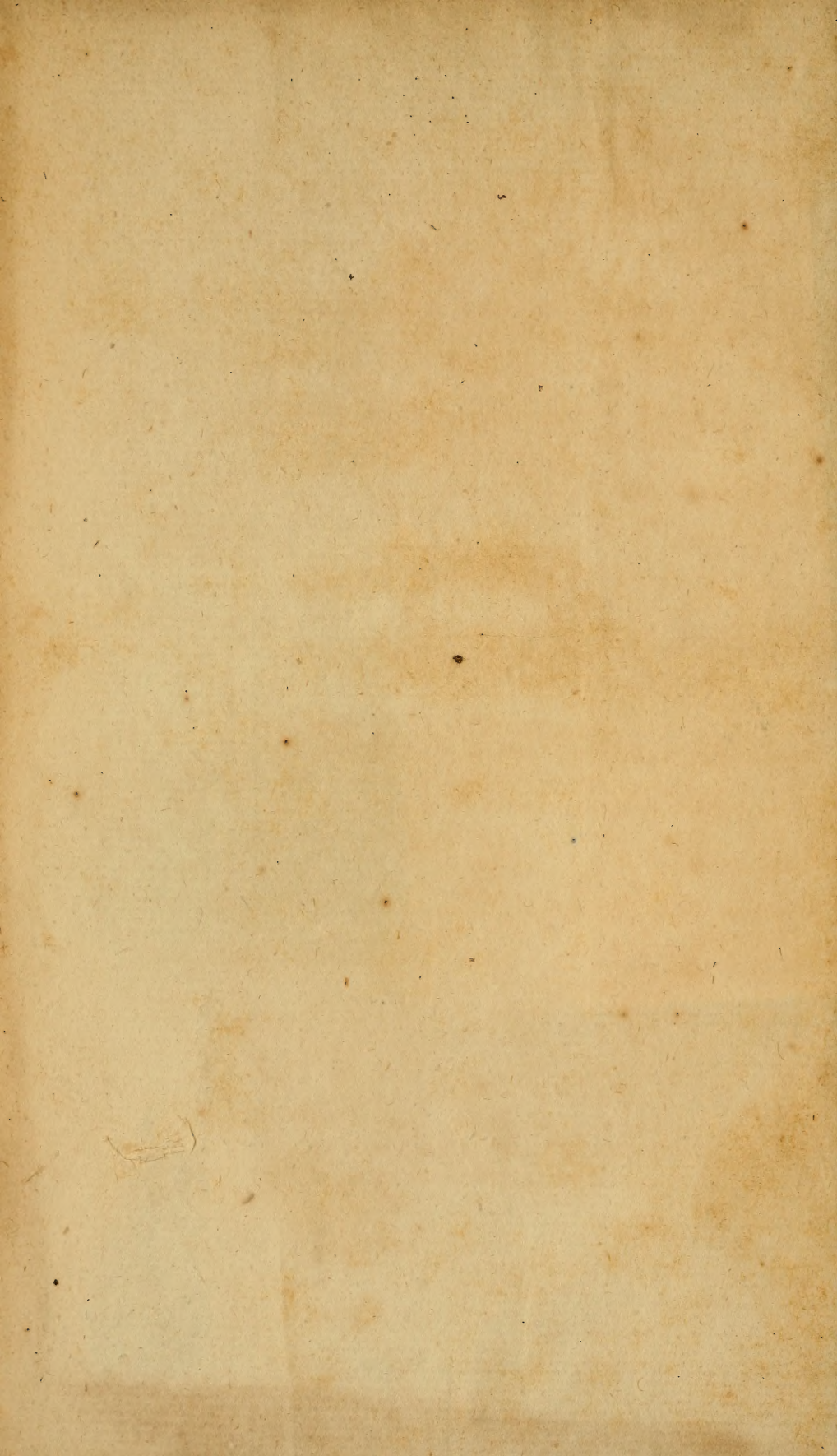
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## BOOKS Printed for John Walthoe:

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3. Brown of Fines and Recoveries.
4. Trials *per Pais.*
5. Baron & Feme.
6. Modern Conveyancer. 3 Vol.
7. Rep. in Chancery. 3 Vol.
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9. Blackerby's Justice.
10. Catalogue of the Common and Statute Law Books, with their Prices.

## BOOKS Printed for Joel Stephens.

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2. Tables of all the Cases printed in the Books of Reports, digested under proper Heads. Fol.
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4. *Lex Testamentaria*, or a System of all the Laws of England relating to Executors, Administrators, last Wills and Testaments. By *William Nelson*, Esq; The Second Edition, 8vo.
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6. *Privilegia Londini*. The Second Edition, 8vo.
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8. The Method of keeping County-Courts, Courts Leet, and Courts-Baron. By *W. Greenwood*, Esq; The Eighth Edition, 8vo.



*John Adams*

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# Instructor Clericalis.

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PART IV.

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BEING A  
CONTINUANCE  
OF

**Bars and other Pleadings**

From the Third Part.

WHEREIN

The Head of *Covenant* is continued; together with a Review, either by Precedent or Reference, of all the *Pleadings* extant, relating to the same: As also to the Title of *Conditions*, as they have Relation to *Covenants*; *viz.*

- I. For making Assurances of Land.
- II. For Quiet Enjoyment, &c.
- III. By General Performance of Covenants.
- IV. Concerning Non-payment of Rent, &c.
- V. Covenants concerning Repairs.
- VI. Concerning Charter-parties, &c.
- VII. Concerning Apprentices and Servants.

ALSO

*Bars and Pleadings* in DEBT, in the several Particulars thereof.

With Variety of Notes, Arguments, and other Observations relating to the same

---

The THIRD EDITION, with Additions.

---

By H. G. a Clerk of the Court of Common Pleas.

---

Whereto is prefixed the Statute for Amendment of the Law, with Observations thereon.

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In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of Edward Sayer, Esq;) for John Malthoe, in the Middle-Temple-Cloysters; and Joel Stephens, at the Hand and Star between the Temple-Gates in Fleet-Street. 1727.

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Infused Classics

PART IV

LETTERS

CONTINUATION

10

State and other Documents

From the President

<sup>x7</sup> ADAMS 253.14

v. 4

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TO THE  
READERS.

**I** Need not, I hope, make  
any Apology for this  
Fourth Part, being  
so necessary a Continu-  
ance to the Third. Let  
it suffice then to say, That  
I make it my Business to  
serve you with the best of  
my Endeavours, and by  
which I desire you may re-  
ceive both Pleasure and  
Profit, and I shall there-  
fore

A 3



To the Readers.

*fore be well Content : And  
because some Things here-  
in may peradventure be  
Corrected or Altered by  
the late Statute for A-  
mendment of the Law, I  
will therefore in the next  
place beg Leave to prefix  
it to this Treatise, as a  
convenient Introduction to  
what follows ; and Sub-  
scribe my self*

Your Servant,

R. G.

Anno

---

Anno quarto & quinto

ANNÆ REGINÆ.

---

An Act for the Amendment of  
the Law, and the better Ad-  
vancement of Justice.

**F**OR the Amendment of the Law in After Trin.  
Term. 1706.  
several Particulars, and for the easier, upon Demur-  
speedier, and better Advancement of rer joined,  
Justice, Be it enacted, &c. (1.) That from and Judges to  
after the First Day of *Trinity-Term*, which proceed ac-  
shall be in the Year of our Lord One thou- cording to  
sand seven hundred and six, where any De- Matter in  
murrer shall be joined, and entred in any Law, &c.  
Action or Suit in any Court of Record with- without re-  
in this Realm, the Judges shall proceed and garding any  
give Judgment, according as the very Right Defect, &c.  
of the Cause and Matter in Law shall appear except such  
unto them, without regarding any Imperfection, as be special-  
ly set down  
Omission as Causes of  
Demurrer.

*Vid. Inst. Cler. 1<sup>st</sup> Part 279, 289.*



Omission or Defect in any Writ, Return, Complaint, Declaration, or other Pleading, Process, or Course of Proceeding whatsoever, except those only which the Party Demurring shall specially and particularly set down and express together with his Demurrer, as Causes of the same, notwithstanding that such Imperfection, Omission or Defect might have heretofore been taken to be Matter of Substance, and not aided by the Statute made in the Twenty-seventh Year of Queen Elizabeth, Intituled, *An Act for the Furtherance of Justice in Case of Demurrer and Pleadings*, so as sufficient Matter appear in the said Pleadings, upon which the Court may give Judgment according to the very Right of the Cause.

27 Eliz. cap.  
5. N. Lutw.  
17.

Nota.

Immaterial  
Traverse.  
Pledges.  
*Profert hic in  
Cur' Script'  
Obl', &c.*

*Literas Testa-  
mentar', &c.*  
2 Hawk. 241.  
*Vi & arm'  
&c.*

Averment  
of *hoc parat'  
est verificare,*  
&c.

Vide Cumber-  
ba. 86, 168,  
299, 311.

(2.) And therefore from and after the said First Day of Trinity Term, no Advantage or Exception shall be taken of or for an immaterial Traverse, or of or for the Default of Entering Pledges upon any Bill or Declaration; or of or for the Default of Alledging the Bringing into Court any Bond, Bill, Indenture, or other Deed whatsoever mentioned in the Declaration or other Pleading; or of or for the Default of Alledging of the bringing into Court Letters Testamentary, or Letters of Administration; or of or for the Omission of *Vi & armis & contra pacem*, or either of them; or of or for the want of Averment of *Hoc paratus est verificare*, or *hoc paratus est verificare per Recordum*; or of or for not Alledging *prout patet per Recordum*; but the Court shall give Judgment according to the very Right of the Cause, as aforesaid, with-

without regarding any such Imperfections, O-Or any other  
missions and Defects, or any other Matter of Matter of  
like Nature, except the same shall be specially like Nature,  
and particularly set down, and shewn for except shewn  
Cause of Demurrer. for Cause of  
Demurrer.

(3.) And be it further Enacted by the Autho-  
rity aforesaid, That from and after the said All Statutes  
First Day of *Trinity* Term, all the Statutes of Jeofails to  
of Jeofails shall be extended to Judgments be extended  
which shall at any Time afterwards be en-  
tered upon Confession, *nihil dicit*, or *non sum* Instr. Cler.  
*informatus* in any Court of Record; and no 1<sup>st</sup> Part 123  
such Judgment shall be reversed, nor any 134.  
Judgment upon any Writ of Enquiry of Da-  
mages executed thereon, be staid or reversed  
for or by Reason of any Imperfection, Omis-  
sion, Defect, Matter or Thing whatsoever,  
which would have been aided and cured by  
any of the said Statutes of Jeofails in Case  
a Verdict of Twelve Men had been given in So that Ori-  
the said Action or Suit, so as there be an O- ginal Writ or  
riginal Writ or Bill, and Warrants of Attorney Bill, &c. be  
duly filed according to the Law as is now filed.  
used.

(4.) Provided always, and be it Enacted by the  
Authority aforesaid, That the Attorney for Plaintiffs  
the Plaintiff, or Demandant in any Action or Warrant, De-  
Suit, shall file his Warrant of Attorney with fendants  
the proper Officer of the Court where the Warrant to  
Cause is depending, the same Term he de- be filed.  
clares; And the Attorney for the Defendant Instr. Cler.  
or Tenant shall file his Warrant of Attorney, 1<sup>st</sup> Part 120.  
as aforesaid, the same Term he appears, under  
the Penalties inflicted upon Attornies by any  
(Part IV.) a former



former Law for Default of filing their Warrants of Attorney.

(5.) And be it further Enacted by the Authority afore said, That from and after the said First Day of *Trinity* Term it shall and may be lawful for any Defendant or Tenant in any Action or Suit, or for any Plaintiff in Replevin, in any Court of Record, with the Leave of the same Court to plead as many several Matters thereto, as he shall think necessary for his Defence.

*Vid. Cumber-*  
*ba. 64, 65,*  
*239, 240,*  
*253, 443.*

(6.) Provided nevertheless, That if any such Matter shall upon a Demurrer joined, be judged insufficient, Costs shall be given at the Discretion of the Court; or if a Verdict shall be found upon any Issue in the said Cause for the Plaintiff or Demandant, Costs shall be also given in like Manner, unless the Judge, who tried the said Issue, shall certify, That the said Defendant, or Tenant or Plaintiff in Replevin had a probable Cause to plead such Matter which upon the said Issue shall be found against him.

Challenges  
to the Array

(7.) And whereas great Delays do frequently happen in Trials, by Reason of Challenges to the Arrays of Panels of Jurors, and to the Polls, for Default of Hundredors: For Prevention thereof for the future, Be it Enacted by the Authority afore said, That from and after the said First Day of *Trinity* Term, every *Venire fac'* <sup>a</sup> *Venire facias* for the Trial of any Issue, in any Action or Suit in any of Her Majesty's Courts of Record at *Westminster*, shall be awarded of the Body of the proper County, where such Issue is Triable.

*Venire fac'* <sup>a</sup>  
awarded.

(8.) Provided



(8.) Provided always, and be it Enacted by Appeals, Indictments, Presentments, the Authority aforesaid, That nothing in this Act before contained, shall extend to any Writ, Declaration, or Suit of Appeal of Felony or Murder, or to any Indictment or Presentment of Treason, Felony or Murder, or other Matter, or to any Process upon any of them, or to any Writ, Bill, Action, or Information upon any Penal Statute.

(9.) And be it further Enacted by the Authority aforesaid, That from and after the said First Day of *Trinity* Term in any Actions brought in any of Her Majesty's Courts of Record at *Westminster*, where it shall appear to the Court in which such Actions are depending, that it will be proper and necessary, that the Jurors who are to try the Issues in any such Actions, should have the View of the Messuages, Lands or Place in Question, in order to their better Understanding of Messuages, ing the Evidence that will be given upon &c. shall be the Trial of such Issues; in every such Case necessary. the respective Courts in which such Actions shall be depending, may order Special Writs Special Dis- of *Distringas* or *Habeas Corpora* to issue, by *strin'* or *Hab.* which the Sheriff, or such other Officer to *Cor.* whom the said Writs shall be directed, shall be *Inst. Cler. 1/2* commanded to have Six out of the first Twelve *Part 95.* of the Jurors named in such Writs, or some greater Number of them, at the Place in Question, some convenient Time before the Trial, who then and there shall have the Matters in Question shewn to them by two Persons in the said Writs named, to be appointed by the Court: And the said Sheriff, or other Officer;

Retorn of  
View.

Officer, who is to execute the said Writs, shall by a Special Retorn upon the same, certifie, That the View hath been had according to the Command of the said Writs.

Attornment  
of Tenants.

(10.) And be it further Enacted by the Authority aforesaid, That from and after the said First Day of *Trinity* Term, all Grants or Conveyances thereafter to be made, by Fine or otherwise, of any Manors or Rents, of the Reversion or Remainder of any Messuages or Lands, shall be good and effectual, to all Intents and Purposes, without any Attornment of the Tenants of any such Manors, or of the Land out of which such Rent shall be issuing, or of the particular Tenants, upon whose particular Estates any such Reversions or Remainders shall and may be Expectant or Depending, as if their Attornment had been had and made.

Notice of the  
Grant.

(11.) Provided nevertheless, That no such Tenant shall be prejudiced or damaged by Payment of any Rent to any such Grantor or Conusor, or by Breach of any Condition of Nonpayment of Rent, before Notice shall be given to him of such Grant by the Conussee or Grantee.

Dilatory  
Pleas.  
Instr. Cler.  
1<sup>st</sup> Part 250.

(12.) And be it further Enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, no Dilatory Plea shall be received in any Court of Record, unless the Party offering such Plea, do, by Affidavit, prove the Truth thereof, or shew some probable Matter to the Court to induce them to believe that the fact of such Dilatory Plea is true.



(13.) And be it further Enacted by the Authority aforesaid, That from and after the said First Day of *Trinity* Term, where any Action of Debt shall be brought upon any single Bill, or where Action of Debt orpleaded upon *Scire facias* shall be brought upon any Bonds, &c. Judgment, if the Defendant hath paid the Money due upon such Bill or Judgment, such Payment shall and may be pleaded in Bar of such Action or Suit, and where an Action of Debt is brought upon any Bond which hath a Condition or Defeazance to make void the same upon Payment of a lesser Sum at a Day or Place certain, if the Obligor, his Heirs Executors, or Administrators, have, before the Action brought, paid to the Obligee, his Executors or Administrators, the Principal and Interest due by the Defeazance or Condition of such Bond, though such Payment was not made strictly according to the Condition or Defeazance, Tho' not yet it shall and may nevertheless be plead-strictly made in Bar of such Action, and shall be as effectual a Bar thereof, as if the Money had been paid at the Day and Place, according to the Condition or Defeazance, and had been so pleaded.

(14.) And be it further Enacted by the Authority aforesaid, That if at any Time, pending an Action upon any such Bond with a Penalty, the Defendant shall bring into the Court where the Action shall be depending, all the Principal Money and Interest due on such Bond, and also all such Costs as have been expended Principal and Interest brought into Court with Costs.

expended in any Suit or Suits in Law or Equity upon such Bond, the said Money so brought in shall be deemed and taken to be in full Satisfaction and Discharge of the said Bond, and the Court shall and may give Judgment to discharge every such Defendant of and from the same accordingly.

Act against  
Frauds and  
Perjuries and  
Nuncupative  
Wills.

(15.) And whereas by an Act of Parliament made in the Twenty-ninth Year of K. *Charles* the Second, Intituled, *An Act for Prevention of Frauds and Perjuries*, it is Enacted, That no Nuncupative Will be good, where the Estate thereby bequeathed shall exceed the Value of Thirty Pounds, that is not proved by the Oaths of Three Witnesses at the least, that were present at the making thereof; It is hereby declared, That all such Witnesses as are and ought to be allowed to be good Witnesses upon Trials at Law, by the Laws and Customs of this Realm, shall be deemed good Witnesses to prove any Nuncupative Will, or any Thing relating thereunto.

Witnesses allowed.

Declaring of  
Uses, &c.  
upon Fines  
and Recoveries.

(16.) And whereas it hath been doubted whether since the making the said last mentioned Act of Parliament, the Declarations, or Creations of Uses, Trusts or Confidences, of any Fines or Common Recoveries, manifested by Deed made after Levying or Suffering of such Fines or Recoveries, are good and effectual in Law: It is hereby Declared, That all Declarations, or Creations of Uses, Trusts or Confidences, of any Fines, or Common Recoveries of any Lands, Tenements or Hereditaments manifested and proved, or which hereafter shall be manifested and proved by any Deed already made, or hereafter to be made



made by the Party who is by Law enabled to declare such Uses or Trusts, after the Levying or Suffering of any such Fines or Recoveries, are and shall be as Good and Effectual in the Law, as if the said last mentioned Act had not been made.

(17.) And be it further Enacted by the Authority aforesaid, That from and after the said first Day of *Trinity-Term*, no Claim or Entry to be made of or upon any Lands, Tenements or Hereditaments, shall be of any Force or Effect to avoid any Fine levied, or to be levied with Proclamations, according to the Form of the Statute in that Case made and provided in the Queen's Court of Common Pleas at *Westminster*, or in the Courts of Sessions in any of the Counties Palatine, or in the Courts of Grand Sessions in *Wales*, of any Lands, Tenements or Hereditaments, or shall be a sufficient Entry or Claim within the Statute made in the Twenty-first Year of King *James* the First, Intituled, *An Act for Limitation of Actions, and for avoiding of Suits in Law*, unless upon such Entry or Claim, an Action shall be commenced within one Year next after the making of such Entry or Claim, and prosecuted with Effect.

Entries and Claims to avoid Fines.

Action within one Year after Entry, &c.

(18.) And be it further Enacted by the Authority aforesaid, That all Suits and Actions in the Court of Admiralty for Seamen's Wages, which shall become due after the said First Day of *Trinity-Term*, shall be commenced and sued within Six Years next after the Cause of such Suits or Actions shall accrue, and not after.

Suits in the Admiralty for Seamen's Wages.

(19.) Provided nevertheless, and be it further Enacted, That if any Person or Persons, who

## An Act for Amendment

is or shall be entitled to any such Suit or Action for Seamens Wages, be or shall be at the Time of any such Cause or Suit or Action accrued, fallen, or come within the Age of twenty-one Years, Feme covert, *Non compos mentis*, Imprisoned, or beyond the Seas, that then such Person or Persons shall be at Liberty to bring the same Actions, so as they take the same within Six Years next after their coming to, or being of full Age, Discover, of Sane Memory, at large, and returned from beyond the Seas.

(20.) And be it further Enacted by the Authority aforesaid, That if any Person or Persons, against whom there is or shall be any such Cause of Suit or Action for Seamens Wages, or against whom there shall be any Cause of Action of Trespass, Detinue, Action Sur Trover or Replevin for taking away Goods or Cattle, or of Action of Account, or upon the Case, or of Debt grounded upon any Lending or Contract without Speciality or Debt for Arrearages of Rent, or Assault, Menace, Battery, Wounding, and Imprisonment, or any of them, be or shall be, at the Time of any such Cause of Suit or Action given or accrued, fallen, or come beyond the Seas, That then such Person or Persons, who is or shall be Entitled to any such Suit or Action, shall be at Liberty to bring the said Actions against such Person and Persons, after their Return from beyond the Seas, so as they take the same after their Return from beyond the Seas, within such Times as are respectively limited

Actions, &c.  
against Persons beyond  
Seas.



limited for the bringing of the said Actions before by this Act, and by the said other Act made in the One and twentieth Year of the Reign of King *James* the First.

(21.) And be it Enacted by the Authority aforesaid, That if any Person or Persons shall be Arrested from and after the said First Day of *Trinity-Term*, by any Writ, Bill or Process, issuing out of any of Her Majesty's Courts of Record at *Westminster*, at the Suit of any common Person, and the Sheriff or other Officer taketh Bail from such Person against whom such Writ, Bill or Process is taken out, the Sheriff or other Officer, at the Request and Costs of the Plaintiff in such Action or Suit, or his lawful Attorney, shall assign to the Plaintiff in such Action the Bail-Bond, or other Security taken from such Bail by Endorsing the same and Attesting it under his Hand and Seal in the Presence of two or more credible Witnesses, which may be done without any Stamp; provided the Assignment so indorsed be duly Stampd before any Action be brought thereupon: And if the said Bail-Bond or Assignment, or other Security taken for Bail be forfeited, the Plaintiff in such Action, after such Assignment made, may bring an Action and Suit thereupon in his own Name; and the Court where the Action is brought, may by Rule or Rules of the same Court, give such Relief to the Plaintiff and Defendant in the Original Action, and to the Bail upon the said Bond, or other Security taken from such Bail, as is agreeable to Justice and Reason; and that such Rule or Rules of the said Court

Bail-Bonds,  
&c. assigned  
to the Plaintiff.

Vide Instr.  
Cler. 1 part  
59.

Suit thereon  
in the Plaintiff's own  
Name.

Court shall have the Nature and Effect of a Defeazance to such Bail-Bond, or other Security for Bail.

Warranties  
made void.

(22.) And be it further Enacted by the Authority aforesaid, That all Warranties which shall be made after the said First Day of *Trinity-Term*, by any Tenant for Life, of any Lands, Tenements or Hereditaments, the same descending or coming to any Person in Reversion or Remainder, shall be void and of none Effect; and likewise all Collateral Warranties, which shall be made after the said First Day of *Trinity-Term*, of any Lands, Tenements or Hereditaments by any Ancestor, who has no Estate of Inheritance in Possession in the same, shall be void against his Heir.

No *Subpœna*  
to issue till  
Bill filed,  
and certified,  
except  
for Injunctions,  
&c.

(23.) And be it further Enacted by the Authority aforesaid, That no *Subpœna*, or any other Process for Appearance, do issue out of any Court of Equity, till after the Bill is filed with the proper Officer in the respective Courts of Equity, except in Cases of Bills for Injunctions to stay Wastes, or stay Suits at Law commenced, and a Certificate thereof brought to the *Subpœna* Office, or to him who usually makes out *Subpœna's*, or other Process in the several Courts of Equity, under the Hand of the Six-Clerk, or other Clerk or Officer, who usually files Bills in Equity, for which Certificate he shall receive no Fee.

Upon Bill  
dismissed,  
Plaintiff to  
pay full  
Costs.

(24.) And for the better preventing vexatious Suits in Courts of Equity; Be it further Enacted, That upon the Plaintiff's Dismissing his own Bill, or the Defendant's Dismissing the same for want of Prosecution, the Plaintiff in such Suits



Suits shall pay to the Defendant, or Defendants, his or their full Costs, to be taxed by a Master, and that no Copy, Abstract or Tenor of any Bill in Equity, do go with the Dedimus or Commission for taking the Defendant's Answer; but in Lieu and Recompence thereof, the sworn Clerks of the Court of Chancery shall take to their own Use, in all Causes, the whole Term-Fee of three Shillings and four Pence, and also the whole Fee or Fees of and for all small Writs made by the said sworn Clerks.

(25.) And be it further Enacted by the Authority aforesaid, That from and after the said First Day of *Trinity-Term*, this Act and all the Statutes of Jeofails shall extend to all Suits in any of Her Majesty's Courts of Record at *Westminster*, for Recovery of any Debt immediately owing, or any Revenue belonging to Her Majesty, her Heirs and Successors; and shall also extend to all Courts of Record in the Counties Palatine of *Lancaster*, *Chester* and *Durham*, and the Principality of *Wales*, and to all other Courts of Records within this Kingdom.

(26.) And for the preventing great Vexation from suing out defective Writs of Error; Be it Enacted by the Authority aforesaid, That upon the quashing any Writ of Error to be sued out after the first Day of *Trinity-Term*, for Variance from the Original Record or other Defect, the Defendants in such Error shall recover against the Plaintiff or Plaintiffs, issuing out such Writ, his Costs as he should have had, if the Judgment had been affirmed,

This Act and Statute of Jeofails to extend to Counties Palatine of *Lancaster*, &c.

Costs upon quashing a Writ of Error. Vide Instr. Cler. i part.

## An Act for Amendment

ed, and to be recovered in the same Manner.

About Wages from her Majesty's Yards or Docks.

(27.) And whereas great Trouble and Expence is frequently occasioned to the Widows, and Orphans of Persons dying Intestate to Monies or Wages due for Work done in Her Majesty's Yards and Docks, by Disputes happening about the Authority of granting Probat of the Wills, and Letters of Administration of the Goods and Chattels of such Persons; and for preventing such unnecessary Trouble and Expence; Be it therefore Enacted by the Authority aforesaid, That the Power of granting Probats of the Wills, and Letters of Administration of the Goods and Chattels of such Person or Persons respectively is, and is hereby declared to be in the Ordinary of the Diocese, or such other Persons, to whom the ordinary Power of Probat of Wills, or granting Letters of Administration do belong, where such Person and Persons shall respectively dye; And that the Salary, Wages or Pay, due to such Person or Persons from the Queen's Majesty, her Heirs or Successors, for Work done in any of the Yards or Docks, shall not be taken or deemed to be *Bona notabilia*, whereby to found the Jurisdiction of the Prerogative Court.

The Ordinary to grant the Probat.

Such Wages not to be deemed *Bona notabilia*.

(28.) And be it Enacted by the Authority aforesaid, That from and after the said First Day of *Trinity-Term*, Actions of Account shall and may be brought and maintained against the Executors and Administrators, of every Guardian, Bailiff and Receiver; And also by one Joint Tenant and Tenant in Common, his Executors and Administrators, against the other, as Bailiff for receiving more than comes

Account against Executors, Guardians, &c.

to



to his just Share or Proportion, and against the And by one  
 Executor and Administrator of such Joint-Te- Jointenant  
 nant or Tenant in Common : And the Au- against ano-  
 ditors appointed by the Court, where such Auditor to  
 Action shall be depending, shall be, and are administer  
 hereby impowered to administer an Oath, an Oath.  
 and examine the Parties touching the Matters  
 in Question, and for their Pains and Trouble  
 in auditing and taking such Account, have  
 such Allowance as the Court shall adjudge to  
 be reasonable, to be paid by the Party, on  
 whose Side the Balance of the Account shall  
 appear to be.

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Obfer-

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*Observations on the foregoing Statute, so far as it relates to the ensuing Treatise.*

SECTION the 2<sup>d</sup>. of the preceding Statute mentioning *immaterial Traverses*; it may be proper here to observe, that the same are not to be intended of Traverses or Pleas in general, but only of those special Traverses in the Conclusion of a Plea, &c. and which are usually made by those formal Words, *absque hoc*, &c. and whereof, though they are altogether *immaterial*, no Advantage is to be taken by this Act, but by a Special Demurrer thereto; and the like may be said of any of those Omissions which are there enumerated, *viz.* Want of entring Pledges on a Bill or Declaration, or omitting *Profert hic in Cur'*, &c.

Section the 12<sup>th</sup> provides that no dilatory Plea shall be received but on Affidavit of the Truth thereof, &c. yet seeing dilatory Pleas are rather Pleas in Abatement than in Bar, I shall refer you to the First Part of *Instructor Clericalis*, last Printed, p. 249. wherein you will find some Observations on such  
Pleas



## Observations, &c.

Pleas in Abatement with the Forms of such Affidavits, and likewise in the 3<sup>d</sup> Part of *Instructor Clericalis*, Page 1, &c.

Section the 13<sup>th</sup> relates particularly to pleading *Payment* in Bar to an Action of Debt, brought on a single Bill; or where an Action of Debt, or *Scire Facias* is brought on a Judgment; and also to the pleading of *solvit ad diem*, &c. in Bar to an Action of Debt, brought on a Bond conditioned or defeasanced for Payment of Money, at a *Day or Place certain*; whereto the Defendant may now plead Payment at the Day, &c. although such Payment was not strictly made according to the Condition or Defeazance of such Bond.

Payment was formerly no Plea to a *Scire Facias* upon a Judgment in Debt. 3 *Lev.* 19, 20. But now by this Statute, Payment, tho' after the Day, may be pleaded to any Action of Debt upon Bill, Bond or Judgment, or *Scire Facias* upon a Judgment.

And upon *solvit ad diem* pleaded, it is good Evidence, to prove Payment at any Time after the Day, and before the Action brought.

*Solvit ad diem* was, before this Statute, held a good Plea to a Bond of 20 Years Standing, and no Interest paid or demanded thereupon, nor good Cause shewn for Forbearance. *Mich. 2 Annae Mod. Cases* 22.

Where a Man was bound to pay his Rent *Mich. 12.* at the four Feasts, or within ten Days after *Car. 1.* every of them, or within six Months, *Payment Generally* was held no Plea, it being in the Disjunctive, for he had his Election at which

## Observations, &c.

which of the Days to pay it on. *Cro. Car.*  
421.

But now by this Statute he may plead *solvit ad diem*, if pay'd before the Action brought.

Where an Action lies meerly upon a Deed it self, without a Condition or Defeasance therein contained, there no Plea in Bar is good without another Deed of as high a Nature, or such Plea as Infancy, *Dures*, *Rasure*, &c. which are Matters triable *per Pais*: But if the Action be upon a Bond with Condition for Payment of Money there; upon Oyer of the Condition, the Defendant may plead *solvit ad diem*, as aforesaid.

You cannot plead *Nil debet* to Debt on a Bond, but the Plaintiff may demur to such Plea.

To a Declaration on a Bond, if the Date or other material Part thereof be mistaken, you may plead *non est factum*, because no such Bond; yet though the Bond of an Infant, or one *non Compos* is void, they cannot plead *non est factum*. *Salk.* 427, 675.

Instructor



# Instructor Clericalis.

## P A R T. IV.

**H**AVING in the Third Part of this Treatise (amongst other Things) laid down and explained the Method of Pleading, first, by Twelve several Branches of Abatement ; and secondly, By Ten General Bars to the Action ; we descended to these Eight particular Heads, viz, *Case, Covenant, Debt, Detinue, Quare Impedit, Replevin, Trespass and Waste*: As being Actions most in Use, and therefore chiefly to be insisted on.

The first of these, viz. *Case*, divided itself into several Branches or Bars, as *Bar al Slander, Assumpsit, Disturbance, Misfeasance, Malefeasance, Negligence, Trover, Deceit, Nuisance and Escape*. Also the second Head, viz. *Covenant* is therein in general treated of and explained: We come now therefore to speak more particularly to the several Pleas in Bar, to Actions of *Covenant*, and shall then proceed to Pleas in Bar to other Actions, viz.

1. *Debt.*
2. *Detinue.*
3. *Quare Impedit.*
4. *Replevin.*
5. *Trespass.*
6. *Waste.*

## Bar al Covenant & Condition.

But because in the said Third Treatise, *fol.* 496. it is observed, That there are many Bars, &c. relating to Lands, and the Covenants in Indentures and Articles, which properly come under the Title of *Debt*, by reason they are pleaded to *Conditions of Bonds, &c.*

As Bar, &c.	{ To Conditions for assuring of Lands.
	{ For quiet Enjoyment.
	{ To be free from Incumbrances.
	{ For Non-payment of Rent.
	{ For not repairing Houses, &c.
	{ For not doing other Things relating to Lands, and to Conditions and Covenants performed generally, &c.

Which are there *p.* 523. referred to be farther treated of under the said Title of *Debt*; therefore to compleat that Head, they come now in Course to be more fully examined; in which Examination we will review, and also look forward to the several Particulars relating to this Title of *Covenant*, and add some proper Precedents thereto; and then proceed to other Bars and Pleadings in Actions of *Debt*.

Now, Pleas in Bar to Actions of *Covenant*, may properly (as the Actions themselves usually are) be distributed in general, under the following Heads, *viz.*



Bars to Covenants.	{	For Assurances of Lands, &c.
		For quiet Enjoyment, and free from Incumbrances.
		For general Performance of Covenants.
		For Payment, or Non-payment of Rents, &c.
		For not Repairing, Fencing, &c. Houses, Lands, &c.
		Concerning Charter-parties saving harmless, &c.
		Concerning Apprentices, Servants, &c.

Of these in their Order :

And First,

## (1) Of Bars concerning Covenants to make Assurances of Lands, &c. viz.

*ss.* **C**ondition to levy a Fine of Lands before the End of *Easter-Term*. *Bar*, That the Plaintiff before the End of the Term, did not prosecute a Writ of Covenant for levying a Fine. *Rep.* That before the End of *Easter-Term*, the Defendant did enfeof *A.* of the Lands mentioned in the Condition, whereby he had no Right to levy a Fine. *Demurrer inde. Winch's Ent.* 331.

## Bar at Covenant & Condition.

*ff.* Bar, that the Plaintiff did not request him to levy a Fine, and Issue thereon. 1 *Lut. Ent.* 284. See this in the following Precedents, number (1).

*ff.* Covenants performed generally, *Replic' Protest' Qd' non performavit aliqua; pro placito qd' non fecit indefesibilem statum in Lege in Manerio de L. Rejo' quod fecit, & Issue.* *Thomp.* 193.

*ff.* After Oyer, Defendant *potestando*, That the Narr' is sufficient; *pro placito*, That the Plaintiff had not made him any good Assurance, nor permitted him to enter, &c. *Demurrer inde.* 1 *Lut.* 493. See this in the following Precedents, numb. (2).

*ff.* Defendant pleads that neither R. C. nor his Assigns devised any sufficient Demise of the Rectory, and that he hath not yet re-assigned, &c. *Read's Dec.* 234.

*ff.* That he had not any Writings which he could deliver, and that the Plaintiff's Counsel did not devise, neither did the Plaintiff request any Assurance. *Co. Ent.* 135. And that the Plaintiff did not require the Writings before the Feast, &c.

*ff.* The like Bar of no Devise of a Release; *Replic' Protest', &c.* That he devised a Release; *pro placito*, That his Counsel devised an Assurance in Writing, which was offered to the Defendant to seal, which he refused. *Demurrer inde. Thomp.* 189.

*ff.* *Quod Quer' non requisivit Def. facere ei Scriptum Relaxationis de Terris.* *Bro. Red.* 163. 1 *Brownl.* 72. *Placit. Generalia, &c.* 267.

*ff. Bar*



¶ *Bar al Obl'*, That a Stranger had no Title to make a Release. 1 *Saun.* 213. See this in the following Precedents, Number (3).

¶ *Bar* that there were not any Lands in the County, of which the Defendant had the Reversion. *Replie'*, That *B.* was seized of Customary Lands for Life, and that the Reversion thereof belonged to the Defendant. Demurrer thereupon. *Co. Ent.* 137.

¶ *Bar* by Covenants performed; *Replie'* That the Defendant had not assured to the Plaintiff and his Heirs, *quandum Aulam secundum formam Indenturæ.* 2 *Browne* 77.

¶ *Al' Obl'* To make an Assurance, Defendant pleads Assurance devised by Counsel. *Replie'* and Demurrer. *Thomp.* 189.

¶ Condition to make a Marriage-Settlement, Breach for not making an indefeasible Estate. *Idem* 191.

¶ Defendant pleads that his Father, Tenant for Life, released with a Warranty which descended to the Son, *Et sic Def. tempore Indenturæ fact' habuit bonum statum in Terris.* Demurrer inde. *Co. Ent.* 113. See 3 *Inst. Clerical.* 407.

¶ Plaintiff by Replication says, that the Defendant had not made him a good Estate of the Lands in Fee, although the Plaintiff was ready to pay the Charges; and Demurrer inde. *Co. Ent.* 132.

¶ Condition to surrender a Copyhold Estate to the Use of the Plaintiff and his Heirs, and that the Plaintiff should enjoy; Defendant pleads Conditions performed; *Repl.* and shews a more ancient Estate of one that entered upon him:

## Bar al Covenant & Condition.

Rej. *Quod non intravit & Issue. Vidian 173, 174.*

*ss.* Condition to surrender a Copyhold Estate to the Use of the Plaintiff. *Bar*, That the Defendant at a Court held such a Day had surrendered according to the Conditions. *Winch. Ent. 241. Demurr' inde.*

*ss.* Condition to make the Plaintiff a good Estate in all the Defendant's Lands; *Bar*, That he enfeoffed the Plaintiff of all his free Lands, and surrendred all his Customary Tenements in *W. ante tale Festum*: *Repl.* That the Defendant was seized of nine Acres of Land in *W.* besides those mentioned in the *Bar*, of which he did not enfeoff the Plaintiff. *Rejo. Qd' non fuit seist'. Rob. Ent. 184.*

*ss.* Condition to make a new Demise at the End of the Term; *Bar*, That the Plaintiff did not offer any Indenture to be sealed by him. *Demurrer inde. Wich. Entr. 309.*

*ss.* *Bar Qd' Def. non fuit rationabilit' pramonit' ad reddend' Evidenc' al Plaintiff, Et qd' Consilium non devisavit. Rob. 197, 198. Repl. Protest' &c. pro placito qd' quer' rationabilit' pramonuit Def. deliberare Script'.*

*ss.* Action upon a Condition for Performance of Covenants brought by the High Sheriff, against the Security of his Under-Sheriff; Defendant after Oyer of the Condition pleads there is not any Covenant on the part of the Under-Sheriff, Plaintiff prays Oyer of the Indenture made between him and his Under-Sheriff, and demurs to the *Bar. Winch. Ent. 319.*

*ss.* *Testator nihil habuit in Tenementis. Idem 99. See 3. Inst. Cler. 416. Vide postea de Rent.*

*ss.* The



*§.* The Defendant pleads the Statutes of 13 and 18 *Eliz.* to avoid the Covenants to make a Lease to the Plaintiff, and the Plaintiff demurs. *Winch. Ent.* 149. See the following Precedents, Number (4).

*§.* After Oyer of the Indenture, Defendant pleads that neither he the Defendant, nor the said *A.* in the Indenture named, were in Possession of the Premisses, *sed extra*, and that the Indenture was made for Maintenance of the Plaintiff's Intestate by the said Defendant, and *A.* for Recovery of the Premisses; and so the Indenture is void. *Bro. Red.* 143. See the following Precedents, Number (5).

*§.* Upon a Condition to assure Lands, the Defendant pleads in Bar, that The Plaintiff had not required any Assurance; Plaintiff replies that he required the Defendant to convey according to the Condition: And Defendant rejoins, *quod non requisivit.* *Yelv.* 44.

*§.* That the Plaintiff received Yearly 8 s. for the Farm of the Lands, and that the Defendant at the End of the Term came with a Deed of Feoffment upon the Lands, and that the Plaintiff, or any for him, did not come there. *Rast. Ent.* 182. See the following Precedent, Number (6).

*§.* That he was ready to make Assurance to the Plaintiff at his Charge, and that he delivered the Plaintiff all the Writings. The Plaintiff Replies, *Protestando quod non deliberavit scripta*; *pro placito*, That he requested the Defendant to come before a Justice of the Common Pleas, to acknowledge a Fine, and offered him 6 s. 8 d. for his Charges. The De-

## Bar al Covenant & Condition.

Defendant Rejoins, *Quod non obtulit ei* 6 s. 8 d.  
*Rast. Ent.* 182. See 3 *Instr. Clerical.* 419.

### (2) Concerning quiet Enjoyment, and Lands freed from Incum- brances.

**B**AR, That the Plaintiff quietly enjoyed the Lands enfeoffed, discharged of all former Titles, &c. and that the Plaintiff required the Defendant and his Son to seal a Release, which the Defendant sealed, but that his Son being illiterate, required the Writing of the Plaintiff, that he might shew it to a learned Man, if it were according to the Condition; which the Plaintiff, refused; wherefore his Son did not seal the Writing, and that the Plaintiff had not requested further Assurance: To this the Plaintiff demurs.  
 2 Co. 1.

§. Defendant pleads, The Premises in the Indenture *termino quo*, &c. were discharged of all Incumbrances, *absque hoc*, that he had demised Parcel of them *prout*, &c. *Et Issue* upon the Traverse. *Bro. Vad.* 242. *Plac. Gen.* 243.

§. That the Plaintiff quietly enjoyed the Lands, That the Defendant and others made all the Assurances devised by the Plaintiff, and that the Defendant delivered all the Writings. Plaintiff *protestando*, &c. says, That one N. an Attorney, devised a Release, that was offered to the Defendant to seal; which he refused.



## Bar al Covenant & Condition.

9

fused. Rejoinder *quod non recusavit*. 3 Brownl. 156.

§. That the Tenements were not charged with former Bargains, and that the Defendant was not damnified by reason of former Grants, &c. Co. Ent. 65 vid. 2 Co. 1. Co. Ent. 135. 147. 635.

§. That the Defendant's Father was seized in Fee, and had full Power to sell, and Issue tendered thereon, and the Plaintiff demurs, Winch. 135.

§. *Protestando*, that the Defendant did not enter into the Manor, &c. *pro placito* that J. and M. did not expel the Defendant. Rob. Ent. 174.

§. Defendant *protestando*, That H. S. had no Right; *pro placito non ejecit*. 3 Inst. Cleric. 403. Repl. *quod ejecit, et Issue*. Id. 404. 2. Saun. 177.

§. That the Defendant did not hinder the Plaintiff to take Possession, and that the Plaintiff was not damnified by reason of former Grants; that the Plaintiff might have quietly enjoyed to such a Day, which Day the Plaintiff demised for Years by Indenture. Repl. That the Plaintiff entred and would have occupied, but the Defendant remained in Possession of the Messuage, and traverseth the Demise. Co. Ent. 65.

§. Action *versus* Baron & Feme; Bar by Conditions performed. Repl. *Protestando quod Def. non performavit, &c. pro placito quod B. dum sola fuit intravit super Possession' Quer'*, and molested him in the Possession of the Close specified in the Articles. Defendant Rejoins *protestando*, that B. did not enter, &c.  
pro

## Bar al Covenant & Condition.

*pro placito*, That B. did not hinder the Plaintiff as alledged; Surrejoinder to maintain the Replication and Issue thereon. 2 *Brown*. 64, 65.

*§.* Bar by Conditions performed. *Repl. Protestando quod Def. non performavit Conditiones*; *pro placito*, That the Plaintiff was impleaded and troubled in the Court of Requests for Parcel of the Land. *Rejoinder*, That the Plaintiff quietly enjoyed, and traverses *quod inquietat' & vexat' fuit, &c.* Surrejo. *quod implacitat' & vexat' fuit, &c.* and Issue thereon. 1 *Brown*. 207.

*§.* Action for Performance of Covenants in an Indenture of Lease. Defendant recites the Covenants on his part, and pleads Performance. *Rep. Protestando quod non*; *pro placito*, That before the Lease made, the Defendant's Husband was possessed of the Messuage, &c. and that the Governors of the new River were seized of a Water-Course specified in the Lease, and demised it to the Defendant and her Husband for Twenty-one Years, if they or either of them should so long inhabit the said Messuage; and that the Baron and Defendant were Inhabitants therein, when the Lease was made to the Plaintiff, and that they departed from the Habitation thereof; by which the Lease made by the Governors was determined, and they diverted the Water-course, and so he could not enjoy it. Defendant demurs generally. *Vidian* 183, &c.

*§.* Condition, That the Lessee should peaceably enjoy the Land. *Bar*, That the Plaintiff surrendered the Lease, and took a new one, and that he held peaceably until Entry by force of the Surrender. *Repl. Non sursumreddidit, & Issue.* *Rast. Ent.* 182, 183, &c.

*§. Qd'*



## Bar al Covenant & Condition.

II

ff. *Qd' Def. post confectio' Indentur' immediate posuit quer' in Possessione præmissorum. Rep. Non posuit Et Exit' superinde. Ro. Ent. 174.*

ff. Defendant pleads, That the Indenture was forfeited, the Rent being in Arrear, *quam ob causam reintravit. Repl. That a prior Estate (after the Determination whereof the Plaintiff ought to enjoy) was in Being at the Time of the Bill exhibited. Defendant Moratur, 143.*

ff. *Protestando quod bene custodivit Conven' de Warrant' protestandoq; etiam quod H. non habuit aliquod legale jus, &c. pro placito quod H. non ejecit. 2 Mo. Int. 209.*

ff. That he performed Covenants till such a Time, and that then *J. Dom. R.* having a better and prior Title, dimised to another who ejected the Defendant. *3 Instr. Cler. 406.*

ff. Condition to perform Covenants, &c. Bar by Performance of all Covenants generally. *Repl. That one T. was seized of the Messuage until one R. disseized him, and demised to the Defendant who assigned to the Plaintiff upon whom T. re-entred and expelled him, and T. was seized in his former Estate, whereby the Term became void. Demurrer inde, 1 Saun. 51. See after Number (7).*

ff. Upon a Bond with Condition for quiet Enjoyment. Bar, That *A.* did not make any Claim of Dower in the Tenements, &c. *Repl. That A. married J. who claiming Title required the Plaintiff to assign a third Part of the Tenements for the Dower of A. Rejo. Potestando quod J. non requisivit; pro placito quod J. pro A. ux' ejus non legitime clamabat tertiam partem Tenementorum pro dote, and Issue. Thomp. 127.*

ff. Bar

## Bar al Covenant & Condition.

¶ *Bar per Condition<sup>2</sup> perform<sup>2</sup> Repl. Protest<sup>2</sup>, &c. pro placito terræ onerat<sup>2</sup> fuer<sup>2</sup> cum titulo dotis ux<sup>2</sup> Def. Rejo. Non fuer<sup>2</sup> onerat<sup>2</sup>. Ro. Ent. 183.*

¶ *Repl. Quod quer<sup>2</sup> post mortem C. in Tenementa primo intravit & fuit seisit<sup>2</sup> ut primus occupans inde. Et travers<sup>2</sup> quod Def. primo intravit. Bro. Red. 256. See after Number (8).*

¶ *Debt against an Executor. Condition that the Lessee should peaceably enjoy, &c. Bar, that the Lessee held the Land until the Heir entred for Non-payment of Rent. Ro. Ent. 183, &c.*

¶ *Bar, That the Defendant and his Assigns were expelled by the Earl of Essex. Repl. That they peaceably enjoyed, with a Traverse. Rejoinder as before, that the Earl of Essex entered upon their Possession. 2 Brown. 81. Issue inde. See after Number (9).*

¶ *Quod quer<sup>2</sup> quiete gavissus est boscum & maheremium sine interruptione Def. & cujusdam R. Id. 102. See 3 Inst. Cler. 420.*

¶ *Conditions performed pleaded, (which was, the Defendant should not claim Dower in the intail'd Lands.) Repl. And shews the Claim. Rejoind. Non clamavit modo & forma. Thomp. 198.*

¶ *Covenant for quiet Enjoyment. The Plaintiff in his Replication shews a Breach by a former Estate made by the Defendant. Rejoinder, that he was within Age at the Time of making the former Estate. Surrejoinder, Fuit plenæ ætatis. Idem. fo. 202.*

¶ *A Replication that the Defendant non reliquit aut sursumreddidit Tenementa Quer<sup>2</sup> juxta*



*juxta Conventionem*, but held over the Possession. *Brownl. Red.* 257. See after Precedent, Number (10).

*Bar*, by a Surrender and Issue thereupon.

3 *Inst. Cler.* 393.

§. The Defendant pleads that he had surrendered a Copyhold, and that the Plaintiff had quietly enjoyed it. Plaintiff replies, That one *J. S.* entred and ousted him. 1 *Saun.* 145. *Vide postea de Rent. Et vide in Preceden<sup>o</sup>* Number (11).

§. *Similis Bar*, *Repl. non solvit reddit<sup>o</sup>*; *Rejo. quer' intravit in parcell'*, *Et expulit Def. Surrejo. quod non expulit.* *Wi. Ent.* 289. *Vide postea.*

§. The Condition was to discharge Lands from Rent demanded. *Bar per non damnificari<sup>o</sup>*; *Repl.* That one *H.* being seized, demised to *A. B.* and *C.* for Lives, rendring Rent, and that the Reversion descended to Co-heirs, who by their Bailiff distrained the Plaintiff's Cattle for Rent arrear, and that the Plaintiff, to avoid the Suit, made a Bond to pay all the Rent due before such a Feast, and gave Notice thereof to the Defendant, and requested Payment, which he did not do; whereupon the Plaintiff paid the Rent. *Hern* 309.

§. The Condition was for Performance of Articles about a Way. Defendant after Oyer sets forth the Articles, and Performance generally, *Rep. Protestando non observavit; pro placito*, That he was obstructed in his Way by a Tenant. Defendant demurrs, and Judgment *pro Defendant.* *Lev. Ent.* 47. &c. and 3 *Lev.* 305. See after in the Precedents, Number (12).

§. *Pro*

## Bar al Covenant & Condition.

ff. *Pro Adm' Lessee versus Lessor, Bar*, That the Lessee surrendered, till which Time the Lessor had observed his Covenants. *Repl.* That the Testator died possessed, and Plaintiff entered as Administrator, and granted to E. who was possessed until the Defendant expelled him, and traverses the Surrender, and Issue thereon. *Thomp.* 178.

ff. Upon a Covenant not to claim Jointure, &c. Defendant pleads she claimed nothing but what was left her by the Testator's Will. *Repl.* That she claimed and took a Silver Goblet and Gold Ring not belonging to her by the Will. *Read's Decl.* 230.

ff. Covenants performed. *Repl.* That the Defendant was not the true Proprietor of the Marsh-Land and Close; *Rejo.* *Qd' fuit verus proprietarius.* *Rob. Ent.* 192.

ff. Condition to surrender Customary Lands, and for quiet Enjoyment from the Defendant, and one L. Bar, That the Defendant surrendred, and the Plaintiff quietly enjoyed; *Repl.* That the Wife of L. claiming Title under him for Term of Life, expelled the Plaintiff; *Rejo.* *Qd' non expulit.* *Vidian* 173. See before, and Precedent (11).

ff. Defendant pleads *qd' permisit Testator' et Exec' depasturare* 100 Oves secundum, &c. *Repl.* and Issue. *Rob. Ent.* 182.

ff. Covenants performed generally. *Repl.* that he could not quietly enjoy, & *monstre coment.* *Rejo.* *cum travers' & Issue superinde.* 1 Browne 193. Cl. Affist. 334, 343.

ff. *Similis Bar*, *Repl.* That T. reco v'd the Premises against the Plaintiff by Verdict in Ejectment at the Assizes, & *quer' amovit.* *Re-*



jo. That the Recovery was by Fraud, and Issue thereupon. *Tho.* 210.

§. That the Defendant had demised him another Messuage in Satisfaction of Damages. 3 *Inst. Cler.* 393. Repl. *que ne unques demise in plena satisfactione, &c.* Idem 394.

§. Covenant upon an Assignment of a Lease, and Breach by a prior Title made by the Defendant to *E.* and *G.* of two Parcels. Bar as to one of them, that *E.* and *G.* had no Title; and to the other, that the Plaintiff had Notice of the Demise to *E.* and *G.* and that afterwards the Survivor at the Request of the Plaintiff attorn'd to him, *Et qd' ill' non extratenuit quer'.* Demurrer inde. 1 *Lut.* 317, &c. And Judgment for the Plaintiff. *Id.* 323.

§. Defendant pleads that he permitted the Plaintiff to make a Drain according to Covenant, but he refused it. Demurrer inde. 2 *Ven.* 272. See 3 *Inst. Cler.* 404.

*Vide* 2 *Brown.* 64, 77. and 3 *Instr. Cleric.* 428. Bar and Issue upon stopping a Water-course.

## (3) By General Performance of Covenants, &c.

§. Defendant pleads Performance of Covenants in Articles generally. *Vide postea* Numb. (13).

§. *Aliter*, Repl. and Breach, *postea* Numb. (14).

§. Defen-

## Bar al Covenant & Condition.

*ff.* Defendant pleads Performance of all Covenants generally; Repl. and Issue thereupon. *Co. Ent.* 66, 132, 133. See 3 *Inst. Cler.* 185.

*ff.* Conditions performed, pleaded to Articles. *Cl. Ass.* 80. *Simile al Indenture. Id.* 341. *Lev. Ent.* 48. See after Numb (13).

*ff.* Defendant pleads specially Performance of all Covenants; Repl. and Issue thereon. *Co. Ent.* 63, 65, 133.

*ff.* Performance general by an Heir, Executor. See Precedents *postea* Number (16, 17.)

*ff.* That the Defendant *non infregit Convention' præd.* *Rob. Ent.* 170. *Br. Red.* 147. See 3 *Inst. Cl.* 385.

*ff.* *Aliter* Repl. by an Administrator. *Vide* Precedent *postea* Number (17).

*ff.* Defendant pleads Indenture and Conditions, &c. performed generally. *Bro. Vad.* 221. *Cl. Assist.* 83 *Cliff.* 192.

*ff.* That he hath power to sell. *Co. Ent.* 135, 147, 635.

*ff.* *Qd' Def. providebat, &c. les provost' accordant al Covenant.* See 3 *Inst. Cl.* 386.

*ff.* That he was seized in Fee at the Time of the Indenture made. *Co. Ent.* 147, 635.

*ff.* Defendant pleads that neither he nor any of his Tenants have broken the Covenants mentioned; Repl. *non succider' lignum secundum, &c.* and Issue. *Bro. Vad.* 142, 146.

*ff.* That the Father in his Life-time, and the Son after his death, quietly enjoyed the Lands sold. *Id.* 147.

*ff.* That the Defendant planted so much Quick-Hedge as was necessary. 3 *Inst. Cler.* 386.

*ff. Debt*



ff. *Debt sur Obl' &c. Barr' qd' non sunt aliqua Convention', &c. ex parte Subvic' performand. Repl' & post Oyer Indentur' quer' Demurr'.* Wi. En. 319.

ff. *Bar. per Performance generally; Repl. That the Lands were not of so much Yearly Value.* Co. Ent. 635. Bro. Red. 153. *Vide postea*, Number (18).

ff. *Qd' non sunt aliqua Conventiones ex parte Def. performand'.* Ibid.

ff. *Qd' non aravit Terras.* 3 Brownl. 168.

ff. That he performed the Covenants specially, and as to the Covenant of not Plowing the Lands, pleads the Statute of holding Lands in Tillage, and as to the other Covenants, That he performed them specially. Co. Ent. 131. *Vide postea*, Number (19).

ff. To a Covenant to leave the Lands at the End of the Term. *Bar.* That before the Demise the Plaintiff disseised J. of the Lands which he demised to the Defendant, That J. re-entred and enfeoffed H. from whom it descended to T. who was seized at the End of the Term, *Et sic non potuit relinquere, &c.* Bro. Red. 168. 2 Brownl. 33.

ff. *Quer' allegat qd' licet ipse non infregit aliquam Convenc', &c. Protest' qd' Def. non performavit aliqua, &c.* Dyer 371.

ff. That he offered to deliver the Corn to the Plaintiff, and he would not receive it, and is yet ready. *Repl. Qu'd non obtulit.* Rast. Ent. 134. See 3 Inst. Cl. 395.

ff. *Non deliberavit Carbones, &c. non deliberavit siliginem.* Cl. Ass. 339.

ff. Performance of Covenants generally; *Repl. Qd' non sursumreddidit possessionem præniss' in*  
(Part IV.) C *fine*

## Bar al Covenant & Condition.

*fine Termini. Rejo. Qd' sursumreddidit & Is-  
sue.* Win. En. 294. Bro. Red. 257.

¶ *Non deliberavit Statut' Stapul' secundum,  
&c. Rejo. Qd' non fuit in custod' Def. & Is-  
sue.* Thomp. 141.

¶ Condition to perform Covenants in In-  
dentures. Bar, That before any Original Writ,  
the said Indentures were cancelled by Consent  
of the Plaintiff and Defendant. *Demurr' inde,  
Barr' male. Wi. Ent. 340. Vide postea Num-  
ber. (20)*

¶ Conditions performed to an Indenture  
for Part, and to Residue *parat' ad solvend'.*  
*Cl. Ass. 325.*

¶ Conditions to perform Covenants of In-  
denture. Defendant after *Oyer* pleads the In-  
denture, and Performance of some Covenants  
specially, and then he pleads Performance of  
all Covenants generally. *Demurrer' inde Bro.  
Red. 212.*

¶ Defendant pleads an Accord, that he  
should pay the Plaintiff 30 *l.* in Satisfaction of  
the Covenants, which the Plaintiff received.  
*Demurrer inde. 1 Lut. 358. Vide the Pre-  
cedent, Numb. (21).*

¶ That the two Lessees or the Executors  
did not plough any Lands, except, &c. and  
that they performed all the other Covenants.  
Repl. That the Defendant being Executor of  
the surviving Lessee, *aravit terras præter, &c.*  
and Issue thereon. 3. *Brownl. 167.*

¶ *Bar per Release, & Demurrer inde. Co.  
Ent. 116. See 3 Inst. Cler. 387.*

¶ *Bar*



ff. *Bar per Concord. Repl. per nul tiel Concord. Co. Ent. 117. Vide postea le Precedent, Numb. (22.)*

ff. That the Defendant had received the 10<sup>l</sup>. due before he made the Plaintiff the Letter of Attorney. 3 *Inst. Cler. 386.*

ff. *Qd' Indentura non est factum. Id. 387.*

## (4) Concerning Non-payment of Rent, &c.

**Q**D' quer' nihil habuit in tenementis tempo-  
re Dimissionis, &c. 2 *Ven. 251. Vide postea, Numb. (23). See Yelv. 277. Thomp. 152. Pl. Gen. 256. Lev. Ent. 74.*

ff. *Bar per Performance general. Repl. Qd' non solvit redditum. Ra. Ent. 183.*

ff. *Bar per Performance general. Repl. Qd' die Dominico Def. intravit, &c. Rejoinder, qd' alio die intravit pro redditu & traverse. Ra. Ent. 184.*

ff. *Performance of Covenants generally. Repl. Non solvit denar'. Demur. Cl. Man. 229.*

ff. *Non dimisit. Rast. 152, 175, 176. Vide postea, Numb. (24). 1 Mod. Intr. 205.*

ff. *Non concessit annuum Reddit' per Scriptum prad'. Co. Ent. 119. Postea, Numb. (25).*

ff. *Quoad part' nil debet per Pri'am. Win. En. 225. Pl. gen. 257. 2 Saun. 298. Vidian 153.*

# Bar al Covenant & Condition.

*Qd' Def. non habuit seu occupavit tenementa.* Dyer. 14.

*ff. Non Detinet Reddit'.* Bro. Red. 170. Bro. Met. 181.

*ff. Bar per tender & uncore prist.* Pl. Gen. 255. 2. Mo. Int. 236. *Vide postea*, Numb. (28).

*ff. Quoad part de Rent, Bar per Acquittance, Et non est factum inde.* Rast. 175.

*ff. Quoad part' solvit ad diem.* Read's Dec. 215.

*ff. Quoad part' nul Rent arrear, quoad resid' qd' cepit bona nomine Distriktionis; & adhuc penes se detinet.* Rast. 175. *Vide* Pl. gen. 253, 258, 273. 1 Bro. 200. Thomp. 154, 428. Hansf. 108. *Postea* Number (26).

*ff. Ad part' Reddit', qd' Def. solvit illam quer', al resid' quer' intravit & expulit Def. Repl. non expulit.* 3 Brownl. 18 Rast. 175. bis.

*ff. Similis Bar' & continuance del possession.* Id. Ibid. *Postea*, Number (27).

*ff. Qd' quer' levavit Reddit' per diversas Distriktiones.* Rast. 175.

*ff. Qd' solvit Reddit' al W. per Appunctuation' Quer', Repl. non solvit.* 3 Brownl. 13.

*ff. Qd' solvit Reddit' ad Fest. & sic non debet.* Rast. 175. *Vide postea*, Number (28).

*ff. Qd' Def. assignavit terminum; & Demurr' inde.* Co. Ent. 123. 2 Ven. 228. 3 Lev. 232. 2 Saun. 298. Br. Red 226.

*ff. Qd' assignavit al C. ante concession' reversionis quer'; Repl. qd' non.* 3 Brownl. 20. *Vide postea*, Number (29).



## Bar al Covenant & Condition.

21

ff. *Qd' Def. ante Festum sursumreddidit terminum; Repl. non sursumreddidit. Rast. Ent. 176, 177. Vide postea, Number (30).*

ff. Bar, That the Defendant in the End of the first Year surrendered his Term, and during the said Year held all his Covenants. *Repl. Qd' non solvit redditum. Idem. 183.*

ff. That he had surrendered, and the Lessor had accepted. *Repl. That he had not surrendered. 1 Saun. 253. Vide Precedent, Numb. (31).*

ff. That the Plaintiff Lessee surrendered to the Defendant Lessor, whereupon the Defendant expelled him. *Repl. That he did not surrender. Rast. 136.*

ff. Bar, By Conditions performed; *Repl. protestando, That the Defendant performed not any of the Covenants specified in the Articles; pro placito non solvit redditum secundum Articulos; Rejo. solvit & Issue. 2 Brownl. 70, 71. Thomp. 185. Vidian 186. similis Barr', & similis Repl. & Demurr' inde. Rob. 178. Winch. En. 287. Similis Bar' & similis Repl. versus Exec'; Rejo. qd' Testator in vita solvit. Rob. En. 199.*

ff. *Similis Bar, Repl. Def. non solvit reddit' in aretro to the Grantee of the Reversion for six Years; Demurrer. Wi. En. 204.*

ff. Defendant after Oyer of the Condition pleads the Indenture and Performance, viz.

1. *Qd' solvit redditum durante termino. Co. En. 131.*
2. *Qd' reparavit domos & sepes.*
3. *Qd' posuit Grana in horreo.*

## Bar al Covenant & Condition.

4. *Qd' reliquit Tenementa in fine Termini, &c.*

*ff. Qd' nihil Tenementorum transivit in possessione Def. per Script' Dimissionis. Rast. 163. Videe postea, Numb. (32).*

*ff. That the Demise was made for one Year, absque aliquo Reddend', and afterwards from Year to Year rendring 100 s. under a Condition not performed; and traverses qd' dimisit Tenementa simpliciter. Rast. 153.*

*ff. That the Plaintiff demised to the Defendant as well the Messuage as the Lands and Goods therein for a Certain Term, under a certain Rent unde nichil insolut', and traverses qd' dimisit Mess. tantum. Rast. 176.*

*ff. That J. was seized of Lands which descended to A. whom the Plaintiff disseized; A. re-entered, and no Rent was in Arrear before the Re-entry. Vet. int' 235.*

*ff. That W. being seized of the Lands was disseized by the the Plaintiff, who demised to the Defendant, and W. re-entred before any Rent due. Repl. Qd' non disseisivit. Rast. 176.*

*ff. That the Tenant in Tail suffered a Recovery to Uses in Fee, and Descent to Co-heirs. Repl. That the Recovery was void by the Statute, the Remainder being in the King. 2 Co. 12.*

*ff. Debt by an Executor for the Arrears of an Annuity, pro servitio impenso & impendendo. Bar, That the Defendant requested the Testator to serve him in his Office as formerly, which he refused. Repl. Quod obtulit ad deservierend'. Et travers' quod recusavit. Ash. 217.*

*ff. Debt*



*ff.* Debt against the Executor of *J.* upon a Demise of a Manor and Messuage. *Bar,* That the Plaintiff was seized of the Manor as of a good Title, and of the Messuage by Disseisin, and demised the whole to the Testator rendring several Rents, and the Disseisee before any Rent due re-entred into the Messuage, and expelled *J.* And as to the Rent for the Manor, *Bar,* That he offered it several Days in Pieces of Money called Shillings, and is yet ready to pay it. Demurrer *inde.* *Dyer.* 82.

*ff.* Defendant pleads that he had performed all Covenants on his Part; *Repl.* That he had not paid the 32 *l.* reserved by Proviso and Covenant; *Rejo.* and Issue. *Bro. Met.* 130, 136.

*ff.* *Quoad part' solvit' ad diem' quoad resid',* Def. plead *mort de Cestuy que vie devant jour de payment.* Read's Dec. 215.

*ff.* *Qd' Reversio Tenementorum per Bargain & Sale irrotulat' in Hustings London per Consuetud' concess' fuit* Def. *Repl. protest' non fuit talis Cons. pro placito, qd' S. vendidit quer' Reversionem Tenementorum & traverse S. vendidit* Def. *ante, & Exit'.* Tho. 203.

*ff.* Conditions to pay Money if the Grain upon the Farm by Law belonged to the Plaintiff; *Bar,* That the Grain did not belong to the Plaintiff, nor could he reap it by Law; *Repl.* That the Plaintiff was seized of the Farm upon which the Grain did grow, wherefore it belonged to him by Law. *Rejo.* That before the Plaintiff was seized, one *N.* was seized thereof, which he demised to one *R.* for 21 Years, and covenanted, That *R.* should

have all the Grain growing at the End of the Term; That R. made J. his Executor who sold the Corn: Defendant demurs. *Winch. Ent.* 300.

*J.* Condition to perform Articles. Defendant pleads Conditions performed, Part in the Negative, and Part in the Affirmative; Plaintiff assigns Breach for not paying Money in the Post-Office: Defendant demurs. 2 *Saun.* 409, &c. *Vide* Precedent, Number (33).

*J.* Debt on Covenants to pay 5 *l.* towards Education of the Defendant's Daughter for five Years, with Averment how long she lived. Defendant *protestando*, She was not then his Daughter; *pro placito*, That the five Years are not expired: Plaintiff demurs. *Lev. Ent.* 51. *Vide* Precedent, Number (34).

*J.* Defendants plead that the Testator held the Wine-Cellar for a Year, and performed all Covenants for that Time. Breach for Non-payment of Rent. Defendant demurs, pretending that the Reversion of the Rent did not extend to the first Year. *Judic' pro quer'.* *Rob. Ent.* 176.

*J.* Defendants plead that the Testator in his Life, and they after his Death, had performed the Covenants in the Indenture; *Repl.* for Non-payment of Rent. *Idem* 199.

*J.* Covenants performed specially, that he paid the Rent and made Repairs, &c. *Repl.* by way of Estoppel, that the Plaintiff had Judgment for Rent against the Defendant upon Verdict at the Assizes. *Rejo. per nul tiel Record, & Judic' superinde.* *Thomp.*

174.

*J.* Against



ff. Against an Heir upon a Covenant to stand seized to Uses and 400*l.* Jointure. *Bar, per Riens per Discent.* *Repl.* by a former Original, *Nar'* and Judgment, after which one of the Plaintiffs died, and the Plaintiff purchased this new Writ, and then the Defendant had Affets. *Rejo.* That the first Writ was discontinued, and this Writ *non fuit recenter prosecut'*. 1 Lut. 287. *Vide* Precedent, Number (35).

ff. By an Administrator upon a Covenant to pay 10 *l.* yearly to the Wife during Life in lieu of her Thirds; *Bar per* Performance generally; *Repl.* That 5 *l.* was due to her 25 Martii, then living and not yet paid; *Demurrer inde. Idem* 232. *Vide* Precedent, Number (36).

ff. *Similis Bar*, upon Marriage-Articles to pay 10 *l.* *per Annum* for the Use of the Wife. *Repl.* that the Marriage was Solemnized, and 10 *l.* due such a Feast, &c. *Demurrer inde. Idem* 459. *Vide* Precedent, Number (37).

ff. By an Administrator *durant' minoritate W. R.* for Rent *sur* Covenant. *Bar*, That after the last Continuance the said *R.* attained his Age of 21. *Demurrer inde. Idem* 338. *Vide* Precedent, Number (38).

ff. After Recital of an Indenture upon a Bond, where the Plaintiff was to have 200 Furze Fagots, or Wood Fagots, during the Term, Defendant pleads Covenants performed generally. *Repl.* That he had not of the Intestate in this Life, or of the Defendant afterwards, 200 Furze Fagots yearly during the said Term, but that 800 Furze Fagots, or

## Bar al Covenant & Condition.

800 Wood Fagots were due, &c. Defendant demurs. *Id.* 334. 338. See Precedent, Number (39).

*ff.* For 150 *l.* upon Articles, That *T. P.* Vicar of *S.* should permit the Defendant to take Duties and Payments, and should make a Grant of them, and surrender the Vicaridge, so that the Defendant might present. Defendant covenanted to pay the Plaintiff the 150 *l.* *Bar*, That *T. B.* died in the said Year, and before *Michaelmas*, &c. Demurrer *inde.* *Id.* 343, &c. See *postea* Precedent, Number (40).

*ff.* Breach for Rent due and not making Repairs. *Bar*, As to the Rent that the Plaintiff had accepted 5 *l.* 5 *s.* in full Satisfaction; and as to the Repairs that he from Time to Time did repair them in a convenient and reasonable Time. *Repl.* *Quant al Rent non solvit. Et Issue*, and as to the Repairs the Plaintiff maintains his Court and Issue thereupon. *Idem.* 347. See after Precedent, Number (41).

*ff.* *Bar*, That the Defendant left two Millstones upon the Mill, and that the Parties who first viewed them at their Descretion had not agreed upon their Goodness, &c. *Repl.* That he left not so good as he found, nor gave Satisfaction, &c. *Rejo.* By a Repetition of the *Bar.* Demurrer *inde.* *Id.* 688. *Vide postea* Precedent, Number (42).

*ff.* The Defendant pleads, That at the several Rent-days, he was ready upon the Land before Sun-set, to pay it : Demurrer *inde.* *Lut.* 364. &c. *Vide postea* Precedent, Number (43).



§. Upon Breaches assigned by Husband and Wife, in Covenant, for Rent and for Defect of Repairs, and for rooting up Trees; *Bar*, By Outlawry in the Husband upon a Suit in the *Common Pleas*. Demurrer *inde.* 2 *Lut.* 1510, &c. *Vide postea* Precedent, Number (44).

§. For 1100 *l.* upon a Covenant to assign Shares to Defendant, and Defendant to pay 1100 *l.* 30 *Jan.* *Bar*, That he upon or before the said 30th of *January*, had not appointed any Person to whom he might assign, and that the Plaintiff the said Day had not assigned to the Defendant himself. Demurrer *inde.* 1 *Lut.* 490, 492. See after Precedent, Number (45).

§. *Bar*, *Per non est factum al Debt sur Indentur' pro 553 l. port per Adm'. Idem 533.* See after Precedent, Number (46).

§. Breach for not paying Bills of Exchange upon Covenant in a Charter-party. Defendant after Oyer of the Indenture pleads, That he had deposited and left the Money in the Hands of a third Person by the Order, and for the Use of the Plaintiff, according to his Covenant. 3 *Inst. Cler.* 415.

§. Breach for Non-payment of Money upon Agreement for a Lease under a Rent and Covenant. Defendant pleads, *Qd' Testator nihil habuit in Tenementis: Demurr' inde.* 2 *Ven.* 99. See *Instr. Cler.* 416.

§. Debt for Rent. *Bar*, *Per Statute de non-residence.* Repl. *Qd' non absentavit, & Issue.* Tho. 205. *aliter*, *Idem* 217. See Precedent, Number (47).

§. Debt

## Bar al Covenant & Condition.

*§.* Debt for Rent. *Bar, Per Statute de Conformity.* 3 Lev. 78. See after Precedent, Number (48).

*§.* After *Oyer*, of the Conditions, Defendant pleads, That the Lessor was seized for the Life of his Wife, and in her Right, and died, and the Wife entered, and that he had performed the Covenants until her Entry. *Repl'*, And assigns Breach for Non-payment of Rent in the Life of the Lessor. *Vidian* 186.

*§.* Upon Non-performance of Articles for Rent, Defendant pleads, That the Plaintiff was a Bankrupt, and that the Defendant paid the Money to the Assigns of the Commissioners of Bankruptcy. *Thomp.* 166. See after Precedent, Number (49).

*§.* Conditions to perform Articles for Payment of 10 *l. per Ann.* to Plaintiff, so long as Plaintiff and Defendant *Cohabitarent*. *Bar*, That the Plaintiff and Defendant, at the Time of the Articles, or any Time after, *minime Cohabitarer'*. *Demurr' inde.* 1 Lut. 555. See after Precedent, Number (50).

*§.* Debt by *Baron & Feme* upon a Bond to the *Feme dum sola*, against a *Baron & Feme Executrix* of the Obligor. Defendants pray *Oyer* which was for the Performance of Covenants in a Demise for a Year absolute, and after the End of the Year, then (if the Parties should agree) for Three Years then next following, yielding yearly during the Term 40 *l.* at four Payments; and the Defendants say, that the Testator did enter, and held for a Year, and by the Space of that Year he had performed all on his Part; and a Breach was assigned



signed for Non-payment of 10*l.* for a Quarter of the said Year. Defendant demurs, *Eo qd' nullus redditus fuit debit' ad idem festum*, pretending that the Reservation of Rent did not extend to the first Year, but the Court held the Words ( *annuatim durante Termino* ) did extend to the first Year. *Rob. Ent.* 177, 178.

§. Upon a Condition to perform Covenants in a Lease for Years, Part in the *Negative*, and Part in the *Affirmative* ; to the *Negative* Covenant Defendant says, That he had done nothing, and to the *Affirmative* Covenants he pleads Performance generally. Plaintiff by Protestation, That the Defendant had not performed any Covenants, &c. *pro placito*, That he has not paid 13 *l.* 10 *s.* of Rent. *Rejo.* That the Plaintiff 24th of *May*, &c. before any Rent due had entred in part, and ejected the Defendant. The Plaintiff by a Surrejoinder denies the Entry and Ejection. *Winch.* 289.

§. In Debt for the Rent of Four Rooms. *Bar*, As to Part by *Nil debet*, and as to the Residue that the Plaintiff demised the Fifth Room, and that he had entred into the Fifth Room, &c. 1 *Saund.* 203. See Precedent, Number (51).

§. Upon a Lease against an Administrator for Rent Arrear, as well in his Time as in the Time of the Intestate. Defendant pleads the Statute of 32 *Hen.* 8. that a Lease made to an Alien shall be void. 1 *Saund.* 5. See Precedent, Number (52).

§. Debt for Rent ; Plaintiff declares, That *C. G.* seized of the Reversion in Fee after the Life

Life of G. G. the Tenant by Curtesy devised for 21 Years, and afterwards the said C. G. sold the Reversion to G. K. who devised it to the Plaintiff; that the Lessee for Years assigned to the Defendant, and avers the Death of the Tenant by Curtesy. Defendant pleads in Bar, That before C. G. any Thing had, one J. B. was seized and devised to one G. C. and his Wife in Tail special, and that the Lands descended to their Grand-Daughter, who intermarried with G. G. and had Issue C. G. and died; G. G. the Husband being Tenant by Curtesy, C. G. the Son made the Lease for 21 Years after the Death of G. G. to J. L. and afterwards sold the Lands to G. K. That the Lessee assigned to the Defendant, and afterwards C. G. died, and the Tenements descended to S. G. who entered and expelled the Defendant. Plaintiff replies, That after the Bargain and Sale, and before that S. G. entered, the said C. G. levied a Fine of the Reversion, and demands Judgment if the Defendant shall be admitted to alledge against the Fine, that the Lands descended to the said S. G. 1 *Saund.* 250, 251, &c. Defendant rejoins *protestando*, that the Tenements were separated from the Manor by G. G. before the Fine levied, and that they were not contained in the Fine; *pro placito*, That G. K. after the making of his Will, and before the Fine levied, died at S. Plaintiff demurrs, Defendant joins in Demurrer, and Judgment for the Defendant.

§. Extinguishment of Rent by Entry pleaded. 2 *Mo. Intr.* 235.

§. Bar,



*ss. Bar*, By Conditions performed generally. Repl', *Pro placito*, That the Defendant *non solvit reddit' ad festum debit*. Rejo. That the Plaintiff came to live upon Part of the Premises whereby the Rent was not due. Sur-rejo. *Protestand'*, &c. *pro placito* he maintains his Replications, and traverses that he came to live upon Part, &c. and Issue upon the Traverse. *Mo. Intr.* 181.

*ss. Upon a Bond with Condition to pay the Profits of the Tenements. Bar*, That the Profits of the Tenements were worth 10 *l.* and no more, which he offered to the Plaintiff. Repl', *Protestando*, &c. *pro placito*, That the Profits were worth 30 *l.* and traverses the 10 *l.* & *non ultra.* 1 *Brown* 161.

*ss. Debt for Payment of Money at Two Days upon a Sale of Lands by Writing. Bar*, That he paid at the first Day. As to the Residue, that the Plaintiff did not name any Person to whom he should give Security, for Payment thereof. *Winch. Ent.* 255.

*ss. Bar'*, *Per Nonage & Disagreement ad Dimissionem.* *Clif.* 149.

*ss. Bar' al Jointure super Artic'* by Agreement to pay and receive some Money paid down, and a Bond for the rest. Repl', *Protestando non habetur talis Concordia*, nor Bond given; *pro placito*, he did not pay the Money down: *Demurrer inde.* *Id.* 217.

## (5) Covenants concerning Repairs.

§. **B** A R, That the Premises were sufficiently repaired, and Issue thereupon generally. 1 Mo. Intr. 141. See Precedent, Number (53).

§. Bar, By Covenants performed. *Repl. Qd' post impetrationem originalis*, the Premises were ruinous for Defect of Reparations. 2 Brown. 68, 69.

§. *Repl. Qd' Def. non performavit, &c. pro placito*, That he suffered Part of the Premises to be in Decay. 2 Brown. 95, 96. Covenants performed. *Repl. Qd' dimisit Aulam ruinofam ad finem Terminum. Rejo. Non dimisit ruinofam.* Rast. 162. See Precedent, Number (54).

§. Bar, *Qd' reparavit domos & sepes.* Co. Ent. 131.

§. Conditions performed generally. *Repl.* That the Defendant suffered the Wind-mill to be uncovered, *per quod corruit.* 3 Brown. 171.

§. Conditions for the peaceable and quiet Enjoyment of a House. Bar, By Conditions performed, and that the Plaintiff or his Assigns did not give Notice that the House wanted Repairs, nor was any wise damaged. *Repl.* That the Plaintiff gave Notice. Rejoinder and Issue. Rob. Ent. 179, 180.

§. Cove-

§. Covenants performed generally. *Repl. Qd' Def. non re-edificavit un' columbar. super Premiss. quod debuit. Demurr' inde. Idem 190.*

§. In Covenant to make an Account and pay a Moiety of the Money received. Defendant pleads in *Bar*, that he expended the Money in Repairs, and other necessary Charges. 1 *Saund. 45.* See *Instr. Cler. Third Part, fol. 414.*

§. Defendant pleads. That he had assigned the House, and that afterwards it was burnt; and that it was well repaired before to the Bill exhibited. 2 *Saund. 418.* See 3 *Instr. Cler. 396. Demurrer inde.*

§. *Protestando*, That at the Time of the Demise, &c. the Premises were not sufficiently repaired; *pro placito*, That he did repair as need required, and traverses that he left them unrepaired, and Issue upon the Traverse. 1 *Mo. Intr. 140.* See before, Precedent 41.

§. *Ad domos permissas stare discopert' Barr', Qd' sunt & fuer' bene reparat'. Et Traverse qd' fuer' discopert' pro defectu stipulæ. Et sic de aliis. Hern 288.*

§. Defendant pleads, That he repaired the Sea-Banks as soon as he could, but does not shew the Time of the Reparation, neither answered to the Recompensation: Plaintiff demurs. *Winch. Ent. 147.*

§. That the Sea-Walls were broken down by a Tempest, which the Defendant at his own Charge repaired as soon as might be: Plaintiff demurs. *Id. 144.*



## Bar al Covenant & Condition.

*§.* That the Defendant assigned within the Term to R. of whom the Plaintiff received the Rent, and that the Chimnies were taken down by the Plaintiff's Command, and the Leaden Gutter was taken down to build a Shed, the Defendant intending to make a new Gutter, but before he could do it, the Plaintiff entered and expelled him and the said R. &c. *Vidian.* 129.

*§.* *Non dimisit al Part, & Demurr<sup>r</sup> al Part,* viz. As to the Defect of repairing the Chancel, Defendants plead *non Dimiser<sup>r</sup>*, and Demurrer to the Residue. 1 *Saund.* 208. See Precedent, Number (55).

*§.* That at the End of the Term, the Barn was pulled down by the Plaintiff's Appointment, who disposed of the Materials thereof; and that the Defendant kept the rest of the Premises in good Repair during the Term, and left them so in the End. *Bro. Rediv.* 143.

*§.* That the Messuage was not uncovered for want of Tiling, and Issue, and that the Glass-Windows were not broken for want of Glazing, and Issue thereon: *Et sic de aliis.* *Id.* 157.

*§.* That he sufficiently repaired all the Houses during the whole Term, and so left them at the End; That he suffered not the Pavements, Walls nor Floors to be in Decay, nor left them in Decay for want of Repairs at the End of the Term, and tenders Issue to all; and a Demurrer as to the first Plea, and Issue to the rest. 2 *Ven.* 124. See 3 *Instr. Cler.* 398.

*§.* That he repaired during the Term, and so repaired surrendered them at the End of the Term. 3 *Instr. Cler.* 402.

*§.* Breach

*ff.* Breach for not repaying so much Money of 2530 *l.* upon the Sale of a Wood as was wanting in the Measure. Defendant pleads, That the said Wood did contain as many Acres at the Rate of 11 *l.* per Acre, as would amount to the aforesaid Sum of 2530 *l.* *Winch. Ent.* 129. *idem placit'*, &c. *Bro. Vad. Mec.* 126.

*ff.* Covenants performed generally till such a Time, and pleads over a Surrender of the Lease and another Demise. *Repl'*. *Per decays duran' prior' Dimiss. Rejo. Non. Issue inde. Cl. Affist.* 328. 331.

*ff.* Defendant pleads, That he was ready to repair, and that Two Pieces of principal Timber were necessary, of which the Plaintiff had Notice, and yet he did not deliver them: *Demurrer inde.* 1 *Lut.* 316, &c. See Precedents, Number (56).

*ff.* Defendant pleads Performance of Covenants generally. *Repl'*, That the Defendant had permitted the Mills to be in Decay, and sets forth the Particulars. *Rejo.* That he had requested the Plaintiff to allow him mast Timber, *secund'*, &c. and that he had refused to do it: *Demurrer inde. Id.* 394, &c. See Precedent, Number (57).

*ff.* The Defendant answers to every particular; and says, That no Part of the Messuage and Premises are out of Repair, and takes Issue upon every Breach assigned. 3 *Instr. Cler.* 400.

*ff.* Lessor pleads, That he kept the Premises in Repair from Rain and Weather. *Id.* 403.

(6) Concerning Charter-parties,  
saving harmless, &c.

§. D E B T upon a Charter-party. Bar, That the Ship was not strong, nor man'd with 20 armed Men, who were necessary to govern the Ship: Demurrer *inde. Vid.* 161.

§. Condition concerning a Voyage by Ship. Bar, That the Ship was well man'd, victualled and tackled; but in the Voyage was broken and rendered unable by a Storm. Repl. Defendant suffered the Ship to be unable for Default of Repairs, with Intent to defraud the Plaintiff. Defendant repeats his Bar: *Quer' demur.* 1 *Lut.* 698. See Precedent, Number (58).

§. *Def. protestando qd' Navis duran' Voiagio non fuit sana; pro placito qd' Hispanici seipsos hostiliter contra navem non tenderunt.* 3 *Inst.* Cl. 430. 1 *Bro.* 127.

§. *Bar' qd' Navis super diem limitat' non parat' fuit navigare, &c. nec decessit, &c. nec processit, &c.* 3 *Inst.* Cl. 430. *Clerk.* Ass 309, &c.

§. Upon a Bond to perform the Covenant in an Insurance of a Ship. Bar, That the Ship did not return to any Port in *England* and that the Ship in her Return was unfortunately lost within the Time limited. Repl. That the Ship went off from the Voyage, and sailed in another Voyage, and was lost in the  
othe



other Voyage. Rejo. That the Ship was in the Service of the *East-India* Company, (of which the Plaintiff was a Member) and deviated by order of the said Society. Surrej<sup>d</sup>, That the Money paid by the Plaintiff in the Adventure, was the proper Money of the Plaintiff, and not of the Society; and traverses, That he was a Member of the Society at the Time of the making the Insurance: Demurrer inde. Bro. Red. 248, &c.

ff. To a Bill in Nature of a Policy of Assurance. Defendant *protestando*, That the Ship was not taken *prout*, *pro placito*, That the Plaintiff did not prove the Loss *prout*, & Issue. Bro. Vad. 169.

ff. Articles, That the Defendant, Deputy-Searcher of a Port, should act and indemnify the Principal, &c. Bar, by general Performance. Repl<sup>d</sup>, That he violently resisted the Plaintiff to enter a Ship to search for Horfes, endeavoured to be unlawfully transported by a Stranger. Rejo. *Non resistebat* & Issue. Cl. Assist. 368. *Vide postea*.

ff. Upon a Covenant concerning Hire of Two Ships. Defendant pleads, *Qd' ipse parat' fuit ad computand' cum quer'*. *Et Traverse qd' quer' parat' fuit ad computand' cum ipso*. 3 Inst. Cl. 431. Vidian. 138.

ff. Upon a Covenant to save harmless from Suits commenced before the End of *Michaelmas-Term*, and Breach by a Judgment against the Plaintiff upon a *Scire facias* certified out of the *Exchequer*. Bar, That the *Scire facias Rei veritate primo emanavit* after *Michaelmas-Term*, viz. 30 Nov. &c. *Absq; hoc qd' actualiter emanavit ante finem*, &c. Repl<sup>d</sup>, By way of Estop-

ple and Demurrer thereon. 1 *Lut.* 329. See Precedent, Number (59). And Title *Debt*.

§. Upon a Bond to perform Articles between a Brewer and an Inn-keeper, upon a Demise of an Inn by the Brewer. Defendant pleads Covenants performed generally. Repl<sup>d</sup>, That he was always ready to serve the said Inn with Ale and strong Beer *secundum, &c.* but for Breach says, That the Defendant during the Term, bought Beer and Ale of other Brewers, and had sold it in the said Inn: Demurrer *inde Id.* 374, &c. See after Precedent, Number (60).

### (7) Covenants concerning Apprentices, Servants, &c.

§. **N**O T E, We set forth some Pleadings in the Third Part in Covenants concerning Apprentices; there are also some others not yet mentioned, we will therefore enumerate the whole.

§. *Def. protestando, &c. pro placito*, That the Plaintiff delivered the Goods to be accounted for, and that he accounted with the Plaintiff, who accepted the Account, and the Money thereupon paid by the Defendant *in plenam satisfactionem recepit.* Vid. 80. *Simile Privileg.* Lond. 330. See Precedent (61).

§. The Master pleads in Bar, That the Plaintiff went from his Service without his Leave, and he refused to receive him again.

E

*Et traverse qd' expulit a Servitio, Quer' moratur. Et Def. jungit Et Judic' pro quer', Vidian. 84. Privileg. Lond. 345. See Precedent (62).*

*ff. To a Narr' against an Apprentice in London, Bar, By a Judgment in the Mayor's Court, upon the Custom of the City for an Apprentice (who was not inrolled the first Year) to depart from his Master; and traverseth qd' Def. recedebat a Servitio quer' ante Judicium. Vid. 148. See Precedent (63).*

*ff. To a Bond with Condition for the faithful Service of an Apprentice in London. Bar by Custom, That Apprentices Indentures not inrolled are void. Repl', Per nul tiel Custom & Issue inde, and a Writ awarded thereon to certify the Custom, and Return thereof by the Recorder, que nul tiel Custom, and Judgment for the Plaintiff. Co. Ent. 144.*

*ff. Bar' al Obl. By Stat. 5 Eliz. cap. 5. par 12. which requires that the Indentures should be inrolled, &c. and that the Indentures were not inrolled. Repl', That the Apprentice had departed from his Service: Demurrer inde. 1 Lut. 474, &c. See Precedent (64).*

*ff. The Apprentice pleads: 1. That he departed with Licence, and then traverseth: 2. That he orderly disposed of the Goods by his Master's Command, and for his Use, with a Traverse of inordinate, &c. 3. Qd' non scivit dampnum fuisse factum, & Issue. 4. Non lusit ad jocum illicitum, & Issue. 5. Qd' per mandat' quer' Accessit ad Tabernas ad vinum auferend' cum Traverse, &c. Repl', And Issues upon the Traverses. 1 Brown. 130.*



## Bar al Covenant & Condition.

*§.* The Defendant pleads, That by the Statute of the 5th of *Elizabeth*, that it should not be lawful for any such Master to take an Apprentice, (except his own Son,) unless the Father or Mother of such an Apprentice had 40 s. *per Ann.* to be certified by three Justices under Seal. *Repl'*, That the Defendant's Father at the Time of the Indenture was seized in Fee of Lands of 40 s. *per Annum*, *fore Certificat' & irrotuland' secundum formam Actus &c.* *Rejo. Qd' pater Def. non fuit seisit' de terris; Demurrer inde.* *Winch. Ent.* 137. *Simile Privileg. Lond.* 338. *Similis Bar' in Debt sur Obl. Rob. Ent.* 193. *Bro. Rediv.* 224. See Precedent (65).

*§§.* Defendant pleads that the Plaintiff put him from his Service, and that he had faithfully served him till that Time. *Privileg. Lond.* 324. *Hern* 272. See Precedent, Numb. (66).

*§§.* Debt upon a Writing of Agreement, &c. Master pleads in Bar, That for the better Instruction and Experience of his Apprentice, he sent him with other expert Chirurgeons to *B.* in the *Indies*, using his Art for the said Time. *Winch. Ent.* 270. *Demurrer inde.* See Precedent (67).

*§§.* The Servant brings Debt for his Wages. Defendant pleads, That before such a Day he discharged the Plaintiff from his Service, whereupon he left his Service. *Repl'*, *Qd' non exoneravit, & Issue, Plit' Gen.* 315. See Precedent (68).

*§§.* The Defendant confesses, That the Plaintiff did come into the Service of the Testator, and therein continued till such a Time, when  
the

the Testator did plentifully provide for him; and that such a Day the Plaintiff voluntarily left the Service of the Testator, and traverses that he served him the whole Time in the Declaration: Demurrer *inde.* 1 *Saund.* 265. See after Precedent (69).

*ss.* Bond to perform Covenants in an Indenture of Apprenticeship. Bar, That the Apprentice died, and a just Account was made by him before his Death, and that he never departed from his Service. Repl', That the Apprentice made his Account, and omitted 60 *l.* by him received of one *R.* of the Plaintiff's Money: Demurrer general to the Bar. *Winch. Ent.* 324.

*ss.* That the Defendant offered to serve the Plaintiff, and he refused to receive him, and traverses, That he refused to serve. See Third Part of *Instr. Cler.* 388.

*ss.* The Plaintiff retained a Servant for five Years, and paid him Yearly in Hand 20 *l. pro salario in manibus*, to an Action upon a Bond, with Condition to repay upon Death or Departure without a Quarter's Notice before Discharge. Bar, That the Plaintiff put away the Servant without a Quarter's Notice. Repl', That such a Day he gave him Notice, &c. 1 *Brownl.* 91.

*ss.* Bar, That such a Day the Master put his Apprentice from his Service, until which Time he had performed all Conditions. Repl', *Protestando, &c. pro placito*, That the Apprentice went from his Service; and traverses that the Plaintiff put him out of Service. *Hern* 272. *Priveleg, Lond.* 324.

## Bar al Covenant & Condition.

*ss.* The Master pleads that he found his Apprentice Diet, &c. till he went from his Service : Third Part of *Instr. Cler.* 389.

*ss.* Bar, By a Release made to the Apprentice. 3 *Leon.* 45.

*ss.* Condition to pay *H.* 36 *l.* to the Use of *B.* Bar, that *B.* became Apprentice to *P.* (one of the Obligors) for Seven Years, who delivered his Indenture to him, and discharged him of the Residue of the Term, in full Satisfaction of the said 36 *l.* Demurrer thereupon. *Winch. Ent.* 186, 187.

*ss.* To a Bond with Condition of Performance of a Covenant in an Indenture of Apprenticeship. Defendant pleads a Cause in the Statute of 5th. of *Elizabeth*, of the Apprentice's Father or Mother not having 40 *s.* per *Ann.* &c. *Rob. Ent.* 193. See before, and See Precedent (65).

*ss.* Defendant pleads Covenants performed, and traverses the several Breaches in the Count. *Repl'*, *Per maintenance de Count.* 3. *Instr. Cler.* 389, 392.

*ss.* Defendant pleads *protestando*, That the Apprentice performed his Covenants; *pro placito*, no Notice was given of any Imbezilment; Breach assigned for Money purloin'd, &c. and Notice given: *Issue sur le Notice.* *Thomp.* 183. See Precedent (70).

*ss.* Defendant pleads, That the Apprentice hath not purloined, or imbezilled any Goods, except such particular Goods for which he offered to pay. *Repl'*. *Protestando*, he did not offer, &c. *pro placito*, that he imbezilled 5 *l.* besides other Things confessed. *Rejo. Maintains*



tains the Plea, and Issue thereon. *Bro. Met. Nov. 231.* See Precedent (71).

*ss.* The Defendant says, That the Testator *post consecutionem scripti obiit*, and that the Apprentice *ad nullum tempus post consecutionem scripti absentasset. Et qd' non imbezillavit.* *Rejo. & Issue Cl. Ass. 353.* See Precedent (72).

*ss.* Upon a Bond of Apprenticeship. Bar, *Per performance de tout, specialment.* *Repl'*, That such a Day at *H. in partibus transmarinis*, such and such Goods came to his Hands, and that he was required to give an Account of them, &c. *Demurrer inde. 1 Lut. 386.* See Precedent (73).

*ss.* Upon a Bond to perform Covenants in an Indenture of Apprenticeship. Bar, That it was not proved that the Apprentice made Waste according to the Form of the Condition. *Repl'*, That the Apprentice served him from such a Day to such a Day, and within that Time received Goods of his Master's, and wasted them, and had acknowledged such his Waste by Writing, &c. and the Plaintiff gave Notice thereof to the Defendant, and that he made no Satisfaction within three Months, according to the Condition of the Bond: Defendant demurs. *Winch. Ent. 168.*

# (I) Bars concerning Covenants to make Assurance of Lands, &c.

Breach, That the Counfel devised a Note of a Fine to be levied.

*Bar, Non requisivit,*

(1.) ff. **E** T pꝛeꝛ Ro. per T. A. Attorꝝ suum vend & Defend vim & injur', quando, &c. Et protestando quod pꝛeꝛ J. P. de Consilio erudit' pꝛeꝛ Ro. existend non devilsabit aliquam talem Notam Finis prout pꝛeꝛ B. per Parr' suam pꝛeꝛ supꝛius supponꝛ, pro pꝛito idem Ro. dicit quod pꝛeꝛ B. non requisivit eundem Ro. ad cognoscend eandem notam Finis coram pꝛeꝛat J. T. Nil' pro meliori assurancia premissoꝛum pꝛeꝛat Ro. & hered' suis fiend' prout idem B. per Parr' suam pꝛeꝛ supꝛius supponꝛ Et de hoc poid se supꝛ pꝛiam Et pꝛeꝛ B. sicut. i Lut. 286. See the like of a Release and Fine. Co. Ent. 65.

That the Plaintiff had not made him any good Assurance.

(2.) ff. **E** T pꝛeꝛ J. p R. B. Attorꝝ suum vend & defend vim & injur' quando, &c. Et pet' auditum pꝛeꝛ script Agreas

Agreement' Et ei legitur in hec verba.  
 Memorandum the Fourteenth Day of March,  
 1687. (&c.) *Imprimis*, It is Covenanted (&c.)  
 Whereas Mr. T. H. by Virtue of these Pre-  
 sents hath Covenanted (&c.) Quo lecto &  
 audito idem J. dic' quod pꝛeꝛ T. Accon' su-  
 am pꝛeꝛ vera' eum here non debet quia pꝛo-  
 testando quod Pari pꝛeꝛ de & super pꝛeꝛ  
 script' Agreement' modo & forma pꝛeꝛ fact'  
 & declarat' ac materia in eadem continet' mi-  
 nus sufficien' in Lege exist' ad pꝛo' T. ad  
 Acconem suam pꝛo' vera' ipsum J. habend'  
 manutenend' pꝛo' pꝛito tamen die quod pꝛeꝛ  
 T. nec ante neq; sup' secundum diem Febr'  
 Anno Domini 1688. supradict' in scripto A-  
 greement pꝛeꝛ superius spec' nec ad aliquod  
 tempus huc usque fecit aliquam bonam Con-  
 veianciam seu concessionem Messuagior' &  
 Tenetor' pꝛeꝛ cum pertinen' eidem J. nec  
 permisit neq; pmittere voluit ipsum iterare  
 in eadem secundu' formam & effectum scrip-  
 ti Agreement' pꝛeꝛ Et hoc parat' est iustifi-  
 care unde per' iudic' si pꝛeꝛ T. Accon' su-  
 am pꝛeꝛ' illius eum habere debeat, &c. Quer-  
 moratur & Def. jung' in Mozac Hill. 2  
 W. & M.

This Declaration was upon a Writing of  
 Agreement under Hand and Seal, upon a  
 Covenant to pay Money for Lands; And up-  
 on the Demurrer it was objected, The  
 Words of the Deed would not make a Co-  
 venant on the part of the Plaintiff to con-  
 vey the Lands to the Defendant, because  
 the Words of the Deed are in the Preter-  
 tense



tense (*viz.* Mr. Thomas Hilton *hath* Covenanted, &c.) and by Consequence the Defendant had not any Remedy, if the Plaintiff did not perform his part.

But to this it was answered by the Plaintiff's Counsel, That the Words in the *Prætertense*, *ut res valeat*, might be construed as if they had been in the *Present Tense*, and cited *Bedow's Case*, 1 *Leon.* 25. and *Mo.* 31. and the rather in this Case, because the Deed says, *Imprimis. It is Covenanted, Concluded, &c.* And also because the Words in the other Place are. That the Plaintiff *hath* Covenanted, &c. *by these Presents.*

A second Objection was, That there are no Words in the Deed to oblige the Plaintiff to convey the Lands to the Defendant; the Words of the Deed for this Purpose being only, That Mr. Thomas Hilton, *by Virtue of these Presents, hath Covenanted, Concluded and Articled all that his Messuage, &c. to the within named John Smith, &c.*

To which it was answered, That it is apparent by the Contexture of the Deed, that it was the Intent of the Parties that the Defendant should have the Lands to him and his Heirs; first, Because he was to pay the Value of them; secondly, For that by the express Words of the Deed, he was to enter into them the Second of *February*, 1688. and he could not have them without a Conveyance, and that the Words of the Deed would amount to a Covenant, &c. The Case of *Pordage and Coles*, 1 *Saun.* 319. was cited.

Another

Another Objection was, That the Word *Whereas* in the first Part of the Deed, had made the whole Deed only a Recital. — To which it was answered by the Plaintiff's Counsel, That the Words in the Deed, *viz.* *By these Presents*, will not admit of such an Objection, because such Words shew that he Covenanted by the Deed, and the Word *Whereas* is an idle insignificant Word, and ought to be wholly rejected as if not in the Deed; and for that cited the Case of *Crowley*, in *Vaughan* 173. and other Cases. And for the same Reason the Word *Item*, in the Clause for the Payment of the Money, should be rejected also: And if the Words (*Whereas* and *Item*) should be rejected, and the Words (*hath Covenanted*) should be taken as in the *Present Tense*, as they might, as appeared before, then the Sense would be as follows, *viz.* *Mr. Thomas Hilton, doth Covenant to convey all his Mesuage, &c.*

A fourth Objection was, That the Plaintiff was to convey the Lands before the Payment of the Money. To which it was answered, That could not be, because it is adjudged in *Pordage* and *Cole's* Case, before cited, (which is a like Case) that the Word *Pro* did not make a Condition precedent; and if it should be so, it is not for the Defendant's Purposes in this Case, for then the Payment of the Money is a Condition on the Part of the Defendant, for he is to pay the Money *pro Terris*; but the true Effect of the Deed in Law is, That the several Agreements are reciprocal Covenants,

nants, to prove which were cited, 3 Leon. 219. *Brocas's Case*. 1 Rolle's Abr. 414. T. nu. 5. 416. nu. 15. *Bragg and Nightingale's Case*: And Judgment was given for the Plaintiff by the whole Court. *Vide* 1 Lut. 493, &c.

(3.) That a Stranger had no Title to make a Release.

**E**T modo ad hunc diem (sc.) videtur tam p[re]d[ict]u[m] W. p[er] Acto[r]u[m] suu[m] p[re]d[ict]u[m] quam p[re]d[ict]u[m] S. p[er] F. C. Acto[r]u[m] suu[m] Et p[re]d[ict]u[m] S. N. defendit vim & injuriam quando, &c. Et per auditum scripti Obl[igationis] p[re]d[ict]e Et ei legitur &c. per etiam auditum Conditionis ejusdem scripti Obl[igationis] Et ei legitur in hec verba, The Condition, &c. Quibus lectis & auditis idem S. dicit quod p[re]d[ict]u[m] W. D. Actio suam p[re]d[ict]u[m] inde solus eum habere seu manus tenere non debet Quia dicit quod p[re]d[ict]u[m] A. F. Pater in Conditione p[re]d[ict]e superius notat[ur] adhuc supstes & in plena vita existit videlicet apud L. p[re]d[ict]u[m] in Parochia & Ward[us] p[re]d[ict]u[m] Quodq[ue] idem A. F. Pater tempore consecutionis scripti Obl[igationis] p[re]d[ict]e seu ad aliquod tempus postea hucusq[ue] non fuit nec p[re]tendit h[ab]ere nec adhuc habet nec p[re]tendit seu p[re]tendere possit habere aliquod jus titulum statum interesse vel clameum quocunq[ue] in & ad Dimissionem Anglice Lease p[re]d[ict]e Manerii de M. & cetera p[re]missa in Conditione p[re]d[ict]e superius mentionat[ur] seu in vel ad aliquam parcelam inde sive in vel ad aliqua reddit[us] sive proficua debet p[er] eisdem, Et idem S. ultimus dicit quod p[re]dict[us] C. & P.



& P. F. minime nupte sunt, Quodq; p̄dict  
 C. F. A. F. & P. F. sūt p̄dict  
 Eliz. F. defuncta' in Condicionē p̄dict sup̄ius  
 filii' noīat' & quilibet eorū respective sup̄  
 primum diem M. Anno regni Boni Regis  
 nunc xx. ad plenam etatem xvi. annorū at-  
 tingebant vidēte apud L. p̄dict in Paroch  
 & Ward p̄dict sed idem S. ulterius dic  
 quod p̄dict C. F. A. & P. Filii p̄dict  
 C. F. defuncta' p̄dict tenē confesōem scripi  
 Obl p̄dict seu unquam postea hucusq; non  
 fuer' nec p̄tend' here seu eorū aliquis fuit  
 nec p̄tend' seu p̄tendere possunt here aliquod  
 ius titlum interesse vel clameum quecunque  
 in & ad p̄dict Dimissionē Anglice Lease  
 p̄dict Manerii de M. & cetera p̄missa in  
 Condicionē p̄dict sup̄ius menc' seu in vel ad  
 aliqua reddit' sive p̄ficua debet' p̄ eisdem,  
 Et ulterius idem S. dic' quod p̄dict C. F.  
 in Condicionē p̄dict sup̄ius filii' noīat' ad  
 huc existit infra etat' xxi. annorū viz. etat'  
 xx. annorū & dimid' unius anni & non am-  
 plius vidēte apud L. p̄dict in Paroch &  
 Warda p̄dict Et hoc parat' est significare un-  
 de pet' iudic' si p̄dict M. D. Accōn suam  
 p̄dict inde vers' eum here seu manutenere  
 debeat, &c. Quer' moratur in Lege & Def.  
 jung' in morat'.

This was an Action of Debt upon a Bond,  
 reciting in the Condition, That Whereas a  
 Suit was depending in Chancery between E-  
 lizabeth, Alexander, Priscilla, Mary, and  
 Charles Fraiser, Infants of Elizabeth Fraiser,  
 deceased, by the Defendant their Guardian  
 (Part IV.) E and

and Administrator during their Minority, to the Use of the Infant Plaintiffs, and *William Doughty*, now Plaintiff, and others Defendants; it was decreed, That the said *Doughty*, now Plaintiff, should pay to the said Infants, or to their Guardian, for their Use, the Sum of 850 *l.* in Satisfaction of all their Right, Title and Interest to the said Lease, to the said Defendants in *Chancery*. If therefore the Defendant shall procure Doctor *Alex. Fraiser*, or the Plaintiffs *Elizabeth* and *Priscilla Fraiser*, to perform the Decree, and that he and they shall, at their several and respective Ages of Twenty-one Years, release the Right, Title, Interest and Claim which he or they, or either of them, have, hath or may pretend to have in and to the said Lease of the said Manor and Lands, and to all the Rents and Profits due for the same, and had and received, or not received by the said now Plaintiff, then the Bond to be void. Upon which the Defendant pleaded as above, That the said Sir *Alexander Fraiser*, and the said Infants *Elizabeth* and *Priscilla* never had or pretended to have any Right, Title, Estate, Interest or Claim to the said Manor and Lands which they might release, *Et hoc &c. unde, &c.* Upon which Plea the Plaintiff demurred, and Judgment was given for the Plaintiff by the whole Court: For that the Defendant at his Peril ought to have procured them to make a Release *de facto*, although they had no Right, &c. and the rather, for that it appears by the Condition that they had a Pretence in Equity, although they had

no Right, Title, or Interest in Law. *Vide*  
*1 Saund. 211, 212, &c.*

(4) Defendant pleads Stat. 13 and 18 *Eliz.*  
 to avoid the Covenants to make a Lease.

The Plaintiff declares, That the Defendant,  
 one of the Prebendaries of the Cathedral  
 of *Ely*, and all other the Prebendaries of  
 the said Church, had covenanted joint-  
 ly and severally to make him a Lease of  
 the *Bell-Inn* within *Newgate*, and alledges  
 for Breach, that they had made a Lease  
 of the Premisses to one *P.* by which they  
 were disabled to make the Plaintiff a Lease.

*Crane.*  
*vers*  
*Taylor.*

Bar. R. **E** T pōict J. T. p J. P. Att' su-  
 um veni & defend vim & ins-  
 ur quando, &c. Et dic' quod pōict J. C.  
 Accōn' suam pōict vers' eum here non de-  
 bet quia dic' quod p quendam Actum in  
 Parlamento Dñe Eliz. nup Rñe Angl' a-  
 ud Westm' in Com' Mōdō secundo die  
 Maii Anno regni sui 13. ten' edit' (int' a-  
 ia) inactitat' fuit authoritat' ejusdem Parl'  
 p eo quod longe & irraconabiles Dimissio-  
 es Anglice long and unreasonable Leases  
 act p Colleg' Decan' & Capit'um Rector-  
 es Anglice Parsons Vicar' Anglice Vicars &  
 alios hentes Spirituales Promocōm fuer'  
 principales Cause dilapidaconum & Decres-  
 cent' Anglice the Decay omnium Spirit-  
 E 2 tualium



tualium Promoconū & hospitalitatis & extreme  
 depauperaconū omnium successorū incumbendū  
 in eisdem Inactitat' fuit auctoritate ejusdem  
 Parliamenti quod post ediconem Adus pōict  
 omnes Dimissiones Donacones Anglice Gifts  
 Concessionēs Feoffamenta Conveſtancie vel  
 Stat' tunc postea fiendū hēndū vel pmittendū  
 p aliquem Magrū & Socios alicujus Colle-  
 gii Decanū & Capitulum alicujus Cathis  
 sive Collegiat' Ecclesie Magrū vel Guar-  
 dianum alicujus Hospitalis Rectorem Vicar-  
 rium vel aliquem alium habentem aliquam  
 Spiritualem Promoconem vel aliqua domos  
 terras decimas tēnta vel alia hereditamenta  
 existendū aliquam parcelam possessionum ali-  
 cujus talis Collegii Ecclesie Cathis Capituli  
 Hospitalis Parsonag Vicarag vel al' Spiritu-  
 alis Promoconis vel aliquo modo perti-  
 nendū sive spectandū eisdem vel aliquorū eorū-  
 dem alicui psonē vel aliquibus psonis Cor-  
 poribus Politicis vel Corporat' al' quam p  
 termino viginti & unius Annorū vel trium  
 vicarū a tempore quo aliqua talis Dimissio  
 facta vel concessa foret sup quam consue-  
 tū annualis Reddit' vel plus foret reservat' &  
 solubil' annuatim durandū dicto termino foret  
 penitus vacua & nullius effectus ad oīa in-  
 tencones construccones & pposita aliqua Le-  
 ge consuetudine vel usu in contrarium ali-  
 quo modo non obstant' put p eundem Actum  
 plenius liquet & apparet Et idem J. ulterius  
 dic' quod p quendam al' Actum in Parl dicti  
 nup Rēe Eliz. apud Westm in Com  
 Midd' octavo die Febr' Anno regni sui deci-  
 mo octavo tēnt' edit' int' al' Inactitat' eri-  
 ti

fit authoritat' ejusdem Parl quod omnes  
 Dimissiones post editionem Actus p'dict' fiend'  
 p aliquem p'dict' Ecclesiasticarum Spiritual'  
 vel Collegiat' psonarum vel alios de aliqui-  
 bus suis Ecclesiasticis Spiritualibus vel Col-  
 legiat' terris tenentis vel hereditamentis de  
 quibus aliqua prior Dimissio p termino An-  
 norum foret in esse non expirand' sursum  
 redd' vel finiend' infra tres Annos p' se-  
 quend' confectioem alicujus illis nove Dimis-  
 sionis forent vacue frustrat' & nullius effec-  
 tus aliqua Lege usu vel consuetudine in cons-  
 trarium non obstant' Et quod omnes & que-  
 libet Obligatio & Conventio quecumque post  
 editionem Actus ill' fiend' p renovatione vel  
 confectioem alicujus Dimissionis vel Dimis-  
 sion' contrar' vere intentioni Actus ill' vel  
 p'dict' Act' fact' in p'dict' Anno 13. p'dict' nu-  
 per Regine Eliz. forent penitus vacue aliqua  
 Lege Statuto Ordinatione vel al' re qui-  
 buscunque in contrar' aliquo modo non ob-  
 stant' put in eodem Actu de Anno 18. dce  
 nup R'ne Eliz. int' al' plenius apparet Et  
 idem R. uli'ius die quod diu ante confectioem  
 p'dict' script' indentat' hic in Cur' plat' scilicet  
 19 die Maii Anno regni die Eliz. nuper  
 R'ne Angl' primo quidam A. P. Sacre The-  
 ologie Professoz tunc Decanus Ecc'lie Cathis  
 H're & Individue Trinitatis Elien' & Capitulum  
 ejusdem Ecc'lie fuer' scit' de reddit' p-  
 dict' in p'dict' scripto indentat' hic in Cur'  
 plat' spec' in Dinco suo ut de feodo in jure  
 Ecc'lie sue p'dict' Et sic inde scit' existend'  
 iidem Decanus & Capitulum ejusdem Ecc'lie  
 29 Maij Anno primo supradicto apud Can-



tabr' p̄dict p quoddam scriptum suum indentat' Sigillo Cod eorundem Decan' & Capituli signat' gerend' dat' eisdem Die & Anno dimississent cuidam J. P. tēta p̄dict cum p̄cū hēnd & occupand' eidem J. & Assign' lūis a Festo S̄ci Michis Archi tunc uli' p̄terit' usq; finem & terminū 60 annor' extunc p̄r' sequend' & plenar' complend' & finiend' Virtute cuius Dimissionis idem J. in tēta p̄dict cum p̄cū intrabit & fuit inde possessionar' Et sic inde posses' existend' ac p̄dict Decan' & Capit'lo de reversione inde in forma p̄dict scit' existend' idem J. P. apud C. p̄dict obiit post cuius mortem p̄dict H. T. Decanus Ecclesie Cathis p̄dict lūimo modo electus & p̄fectus fuit Per quod idem H. T. Decanus & Capitulum ejusdem loci fuer' de reversione tenor' p̄dict cum p̄cū scit' ut de feodo & jure in jure Eccleie sue p̄dict Et sic inde scit' existend' idem Decanus & Capitulum post edificō Actus p̄dict & ante tres Annos p̄r' ante finem sursum reddicōnem sive expiraconem Dimission' p̄dict p̄fat' J. P. p p̄dco termino 60 annor' in forma p̄dict scit' p̄dict 27 die Martii Anno regni D̄ni Regis nunc Angl' &c. septimo apud C. p̄dict p p̄dict Scriptum suum indentat' Sigillo Cod eorundem Decan' & Capituli Sigillat' gerend' dat' eisdem Die & Anno dimiser' p̄fat' J. C. tēta p̄dict in narē p̄dict superius spec' Habend' & tenend' p̄dict J. C. Executor & Assign' lūis a p̄dict Festo Annuntiacon' b̄e Marie Virginis tunc uli' p̄terit' ante Dat' Indentur' ill' usq; finem & terminū p̄dict 40 Annor'



norꝝ extunc pꝛ' sequen' & plenat' complend'  
 & finiend' Posteaque scilicet pꝛdicto decimo die  
 Julii Anno regni dicti Dñi Regis nunc  
 Angl', &c. octavo supradicto pꝛdictum scriptum  
 indentat' hic in Cur' plat' in narr' pꝛdict' su-  
 pius spec' fact' fuit eidem J. C. p' pꝛdict' H.  
 T. T. R. R. T. J. P. A. M. J. H.  
 J. D. T. R. ac ipm' Jacobum Taylor Et  
 idem J. die quod pꝛdict' H. C. tempore  
 consecrationis Indentur' pꝛdict' fuit Decanus  
 Ecclesie Cathis pꝛdict' Ac quod iidem T. R.  
 (&c. fuer' integrum Capitulum Ecclesie ill' Ac  
 quod totum & integrum corpus corporat' Ec-  
 clie Cathis pꝛdict' adtunc consistebat de ipsis  
 H. T. T. R. (&c.) tantum & de nullis  
 al' persona sive personis quibuscunque Et is-  
 dem J. T. ult'ius die quod pꝛdict' script' in-  
 dentat' hic in Cur' plat' ac Convenço pꝛdict'  
 in eodem script' content' fact' fuer' p' reno-  
 vacione Anglice the renewing pꝛdict' Dimissi-  
 onis pꝛfat' J. C. in forma pꝛdict' fact' contra  
 Ham intençion' Actus pꝛdict' Quorum quidem  
 pꝛmissorꝝ pꝛtextu pꝛdicta Dimissio tenetorꝝ pꝛdict'  
 pꝛfat' J. C. p' pꝛfat' Decan' & Capitulum an-  
 te tres annos pꝛ' ante finem pꝛdict' termi-  
 ni 60 Annorꝝ p' pꝛfat' Decan' & Capitulum  
 pꝛfat' J. T. de tenetis pꝛdict' in forma pꝛdict'  
 fact' Et pꝛdict' Convençiones scripto pꝛdict' p'  
 pꝛfat' J. P. hic in Cur' plat' content' p' ip-  
 sum R. supius fieri supposit' in forma pꝛdict'  
 fact' vigore Statut' pꝛdict' penitus vacue &  
 nullius vigoris neqꝫ effectus in Rege existunt  
 Et hoc parat' est verificare unde pec' Judic'  
 & pꝛdict' J. T. Actionem suam pꝛdict' vers'  
 E 4 eum

cum Here debeat &c. Quer' moratur. Et  
Def. jung' in morac.

Upon the Demurrer it was argued, That the Lease and Covenant were void upon the Statute of 13 *Eliz.* But the Case was judged for the Plaintiff, That the Covenant was good in Law, because it was not within the Statute of 18 *Eliz.* being concerning a House in *London*: For though the Statute 13 *Eliz.* Cap. 10. be general against all Leases and Grants, other than for Twenty Years, and three Lives, of all the Possessions of Deans and Chapters, &c. yet there is a Statute of 14 *Eliz.* Cap. 11. which is shuffled into an Act of Continuance of Statutes, that enacts, That that Statute 13 *Eliz.* (naming it) shall not extend to any Houses in Cities or Towns, &c. But that the same may be Granted, Demised or Assured, as they might lawfully have been before, and as if that Statute had not been made. So that Statute sets all loose, touching such Houses in Cities as against the Statute of 13 *Eliz.* and therefore the Statute of 14 *Eliz.* Cap. 11. makes a new Law of it self for them, That no Lease shall be made of them in Reversion, which was not restrained by 13 *Eliz.* as appears by the Statute 18 *Eliz.* which provides for that Mischief, as not provided for before. Also the Statute of 14 *Eliz.* Cap. 11. forbiddeth Alienations of such Houses, except there be full Recompence given to the Church at the said Time, so as with such

Recom-

Recompence they may alien in Fee, which was not permitted by the 14th. Then comes the Statute of 18 *Eliz.* which recites, That since the making of the 13th, divers Leases were made long before the Expiration of the former against the Meaning of the Statute 13th, and enacteth, That all Leases made of Lands, whereof any former Lease was then in Being, and not to be ended within three Years, should be void; and that all Bonds and Covenants for making Leases against the Intent of 18 *Eliz.* or 13 *Eliz.* should be void. So this Statute toucheth not the Statue of 14 *Eliz.* which permitted no Leases in Reversion at all, nor was named or mentioned in this Statute. See *Hob. Rep.* 269.

(5) *Bar* by Maintenance betwixt the Plaintiff and his Intestate, &c.

A. Q. Wando, &c. Et pet' auditum Indentur' p'dict' & ei legitur in hec verba This Indenture (&c.) Qua lecta & audita (Action' non) quia dic' quod p'dict' tempore confectio Indentur' p'dict' nec ipse isdem Def. neq; p'dict' A. in Indentur' p'dict' supius notat' fuer' in possessione p'mission' p'dict' in eadem Indentur' mentionat' sed ipsi & eorum quilibet fuer' extra possessione eorundem & cuilibet eorum parcell' Et p'dict' Def. ulterius dic' quod Indentur' p'dict' fact' fuit p' illicita manutenencia de p'dict' T. videlicet the Plain-



Plaintiff's Intestate) per ipsos Def. & A. p  
recuperatione eorundem pmissor hend de su  
re titulo & interesse quor diverse lites &  
secte adtunc mot' & pendeid fuer Et sic In  
dentura pdict ex causa pdict fact' vacua  
& nullius effectus in Lege existit Et hoc  
sc. Unde sc.

(6) That the Defendant came with a Deed of  
Feoffment, &c. and that the Plaintiff did  
not come there, &c.

H. **E** T pdict J. p J. H. Attozid suid vend  
(sc.) Et per' auditid scripti pdict  
Et ei legitur sc. per' etiam auditum indoz  
samenti ejusdem scripti Et ei legitur in hec  
verba. The Condition (&c.) Quibus lectis  
& auditis idem J. dic' quod pdict R. (Action  
non) quia dic' quod pdict W. quolibet an  
no a Festo Sed N. Archi pr' ante dat' es  
jusdem scripti usqz finem quatuor annoz ex  
tunc pr' lequid' fuit & pcepit 8 s. p firma  
ten'toꝝ pdict videlt apud S. in Comd pdict  
Et quod ipse ad finem pdict quatuor annoz  
videlt (die sc. anno sc.) apud B. pdict quod  
dam factid Feoffament' de ten'tis pdict cum  
prin' sub nomine ipsius J. R. p'fat W.  
Hered' & Assign' suis scribi fecit & sigillavit  
& cum eodem facto ad finem eozund quatus  
or annoz sup ten'ta pdict vend ad p'fat W.  
vel Assign' suis & Hered' eoz imppetuum  
securum sufficid & licitum statum leisinam  
& possessionem de & in eisdem ten'tis cum per  
cud

ad per fact' illud deliberand Et die quod  
 pōict W. nec aliquis al per eund W ad  
 hoc Assignū adtunc fuit super tēta pōict'  
 statum possessionē & seīnam ill de ipso J. R.  
 recipere. Et hoc parat' est verificare Unde  
 per' judic' si pōict R. Actionē suam pōict in  
 de vers' eum habere debeat &c.

Rept qđ non recepit 8 s. p firma tēto-  
 rum p ultimo anno Et Exit' superinde.

## ( 2 ) Concerning Quiet Enjoy- ment, &c.

### (7) Debt upon a Bond Conditioned for Performance of Covenants, in an Inden- ture of Assignment.

ff. **E**T modo ad hunc diem &c. Et per'  
 auditum script' Obl' pōict Et ei le-  
 gitur &c. per' etiam audit' Conditionē esus-  
 dem script' Obl' Et ei legitur in hec vba  
 ff. The Condition, &c. Then Defendant  
 sets for the Indenture, and pleads Peformance  
 of all Covenants generally, viz. — Prout  
 per Indentur' pōict relatione inde habita ple-  
 nius liquet & apparet. Et idem D. G. die  
 quod ipse idem D. G. post sigillationem &  
 confectionem Indentur' Assignmentis de qua  
 pōict Indentur' superius prius mentionat' est  
 una pars Anglice the Counterpart usq' diem  
 scribi-

Covenants  
 performed  
 generally.

exhibitionē hille ipsius C. bene & veraci<sup>r</sup>  
 performabit perimplebit & custodivit omnia  
 & singula articulos convenções pmissiones  
 concessiones & agreement<sup>r</sup> que ex parte ipsius  
 D. observand<sup>r</sup> pformand<sup>r</sup> perimplend<sup>r</sup> & custo-  
 diend<sup>r</sup> fuet secund<sup>r</sup> formam & effectum In-  
 dentur<sup>r</sup> Assignaco<sup>r</sup> p<sup>r</sup>dict<sup>r</sup> Et hoc parat<sup>r</sup> est  
 verificare unde per<sup>r</sup> iudic<sup>r</sup> & p<sup>r</sup>dict<sup>r</sup> C. Acti-  
 onem suam p<sup>r</sup>dict<sup>r</sup> inde vers<sup>r</sup> eum habere seu  
 manutenere debeat, &c.

Repl<sup>r</sup>, Et p<sup>r</sup>dict<sup>r</sup> C. dic<sup>r</sup> quod ipse per as-  
 liqua per p<sup>r</sup>fat<sup>r</sup> D. superius placitando al-  
 legat<sup>r</sup> ab Actione sua p<sup>r</sup>dict<sup>r</sup> inde versus  
 eum habend<sup>r</sup> precludi non  
 debet quia protestand<sup>r</sup> quod p<sup>r</sup>dict<sup>r</sup>  
 D. non observabit performabit  
 pimplebit seu custodivit aliqua  
 Articulos convenções promissi-  
 ones concessiones seu Agreeand<sup>r</sup>  
 p<sup>r</sup>dict<sup>r</sup> ex parte ipsius D. ob-

That one T. was seized  
 until R. disseized him,  
 and demised to the De-  
 fendant who assigned to  
 the Plaintiff, upon whom  
 T. re-entred, &c.

servand<sup>r</sup> performand<sup>r</sup> perimplend<sup>r</sup> & custodiend<sup>r</sup> se-  
 cund<sup>r</sup> formam & effectum Indentur<sup>r</sup> Assignaco<sup>r</sup>  
 p<sup>r</sup>dict<sup>r</sup> put p<sup>r</sup>dict<sup>r</sup> D. superius placitando al-  
 legavit p<sup>r</sup> placito idem C. dic<sup>r</sup> quod diu an-  
 te confectionē Indentur<sup>r</sup> p<sup>r</sup>dict<sup>r</sup> per p<sup>r</sup>fat<sup>r</sup> M.  
 hic in Cur<sup>r</sup> p<sup>r</sup>olat<sup>r</sup>, quidam T. T. Gen<sup>r</sup>  
 fuit seisc<sup>r</sup> de Messuag<sup>r</sup> p<sup>r</sup>dict<sup>r</sup> cum pertine<sup>r</sup> cōit<sup>r</sup>  
 vocat<sup>r</sup> sive cogn<sup>r</sup> p<sup>r</sup> noēn vel sign<sup>r</sup> de le White  
 Lyon, superius in Indentur<sup>r</sup> p<sup>r</sup>dict<sup>r</sup> per p<sup>r</sup>fat<sup>r</sup>  
 D. hic in Cur<sup>r</sup> p<sup>r</sup>olat<sup>r</sup> mentionat<sup>r</sup> in Vinco  
 suo ut de feodo iploque sic inde seisc<sup>r</sup> existend<sup>r</sup>  
 p<sup>r</sup>dict<sup>r</sup> R. P. superius in Indentur<sup>r</sup> p<sup>r</sup>dict<sup>r</sup> hic  
 in Cur<sup>r</sup> p<sup>r</sup>olat<sup>r</sup> nominat<sup>r</sup> postea & ante con-  
 fectionē Indentur<sup>r</sup> ill<sup>r</sup> seisc<sup>r</sup> p<sup>r</sup>dict<sup>r</sup> 20 die Ja-  
 nuar<sup>r</sup>



nuar, Anno Regni dicti Domi Regis 14. supradicti in Messuag' illi' cum pertin' sup seisinam p'fat' T. T. inde intravit & eundem T. T. inde expulit & disseisavit per quod idem R. P. fuit seic' de Messuag' illi' cum pertin' in Dinco suo ut de feodo per disseisnam illam iploque sic inde seisit' idem R. P. postea & ante confectionem Indentur' p'dict' hic in Cur' p'olat' scilicet eodem 20 die Jan' Anno 14 supradicto apud L. p'dict' in Paroch' & Marc' p'dict' per Indentur' suam sigillo suo sigillat' adtunc & ibidem fact' & superius in indentur' p'dict' hic in Cur' p'olat' mentionat' dimisit concessit & ad firmam tradidit p'fat' D. G. idem Messuagium cum pertin' habend' & tenend' eidem D. Crecui' Adminis-  
trat' & Assign' suis a Festo Sancti Michis Archi tunc uli' preterit' usque finem & Termin' 21 annorum extunc p'ox' sequend' & plenat' complend' & finiend' Virtute cuius Dimission' idem D. G. in Messuagium illud cum pertin' intravit & fuit inde Possessionat' iploque sic inde Possessionat' existend' idem D. postea scilicet p'dict' 18 die Octobr' Anno Regni dicti Regis nunc 16 supradicto apud L. p'dict' in Paroch' & Marc' p'dict' per Indentur' p'dict' int' p'fat' D. ex una parte & ipsum G. ex altera parte fact' quam quidem alteram partem p'fat' D. modo hic in Cur' p'fert concessit & assignavit p'fat' G. G. tam Messuag' illum cum pertin' quam p'eb' recitat' Indentur' dimission' ac testat' sus titulu' interesse possession' & Termin' annor' ipsius D. de & in eodem Messuagio cum pertin' adtunc ventur' & inexprat'.

Virtute

Virtute cuius quidem concessio<sup>n</sup> & assigna<sup>ti</sup>o<sup>n</sup>  
 idem G. G. in Messuagio illum cum per-  
 tin<sup>ti</sup>o in<sup>tr</sup>avit & fuit inde Possels' iploque sic  
 inde Possessionat' existente ac Jure ejusdem  
 Messuag' cum pertin<sup>ti</sup>o ad p<sup>re</sup>fat. T. T. & he-  
 red' suos spectan<sup>ti</sup> & pertin<sup>ti</sup>o idem T. T. pos-  
 tea scilicet ult<sup>ra</sup> die Febr<sup>is</sup> Anno Regni dicti  
 D<sup>omi</sup>n<sup>i</sup> Regis nunc 17 in Messuag' ill' cum  
 pertin<sup>ti</sup>o super Possession<sup>em</sup> ipsius G. inde in-  
 travit claman<sup>ti</sup> Statum suum p<sup>re</sup>dict<sup>um</sup> de & in  
 eodem & ipsum G. a Possession<sup>e</sup> sua inde ex-  
 pulsit & amovit & fuit inde seiscit' in Dinco  
 suo ut de feodo ut in p<sup>re</sup>ior' Stat' suo inde  
 p<sup>re</sup>dict<sup>um</sup> per quod terminus annorum p<sup>re</sup>dict<sup>um</sup> de &  
 in eodem Messuagio cum p<sup>re</sup>tin<sup>ti</sup>o per p<sup>re</sup>fat. D.  
 eidem G. sic ut p<sup>re</sup>fert' concess' & assignat' tunc  
 vacuus devenit. Et sic idem G. dic<sup>it</sup> quod  
 Dimissio p<sup>re</sup>dict<sup>um</sup> per p<sup>re</sup>fat. R. P. eidem D.  
 de Messuagio p<sup>re</sup>dict<sup>um</sup> cum pertin<sup>ti</sup>o sic ut p<sup>re</sup>fert'  
 fact' p<sup>re</sup>dict<sup>um</sup> term<sup>in</sup>o consec<sup>ra</sup>ti<sup>o</sup>n<sup>is</sup> Indentur<sup>um</sup> p<sup>re</sup>dict<sup>um</sup> per  
 p<sup>re</sup>fat' D. hic in Cur<sup>ia</sup> p<sup>re</sup>olat non fuit bona  
 certa perfecta & indefesibilis Dimissio in Le-  
 ge de eodem Messuagio cum pertin<sup>ti</sup>o per p<sup>re</sup>-  
 fat. R. P. p<sup>re</sup>fat. D. G. in forma p<sup>re</sup>dict<sup>um</sup> dimiss<sup>io</sup>  
 & per eundem D. eidem G. sic ut p<sup>re</sup>fert' con-  
 cels' & assignat'. Et hoc parat' est verificare  
 unde per judic<sup>em</sup> & debum suum p<sup>re</sup>dict<sup>um</sup> unas  
 cum dampn<sup>um</sup> suis occasione deten<sup>ti</sup>o<sup>n</sup>is debi il-  
 lius sibi adjudicari, &c. Defend<sup>it</sup> mo<sup>re</sup>ac. Et  
 Quer<sup>it</sup> jung<sup>it</sup> in mo<sup>re</sup>ac.



In this Case it is to be observed, That from the Defendant's setting forth the Assignment, it appears, That he the Defendant covenanted with the Plaintiff, that the Indenture of Lease from R. P. was then *bona certa perfecta & indefeasibilis dimissio in Lege. Et ita stabit & remanebit querenti durante residuo Termin<sup>o</sup> 21 Annorum tunc inexistat*: And the Plaintiff his Executors, Administrators and Assigns, *quiete & pacifice haberet teneret & gauderet* the said Messuage, *duran<sup>o</sup> toto residuo Termin<sup>i</sup>*, without any Let, Denial, Interruption or Disturbance of the Defendant, or his Executors or Assigns, and acquitted, or otherwise saved harmless of all Incumbrances, had, made, committed, suffered or done by the Defendant (the Rent and Covenants upon the Original Lease, only excepted and foreprised); and the Defendant pleads Performance of all Covenants generally as above, and the Plaintiff replies as above, to which Replication the Defendant demurred. And it was argued for the Defendant, That the Breach was not well assigned, for that it appears, that the Plaintiff was not disturbed or ousted by the Defendant, or any claiming under him, but by one Townley, a Stranger; and the Defendant had not covenanted against the Act or Title of any Stranger; for although he had covenanted that Paget's Lease was indefeasible; yet the latter Words that the Plaintiff should enjoy without Interruption of the Defendant, &c. clearly prove, that the Defendant only covenanted against himself, and those only, who claimed under him,

I and



and thereupon many Cases were cited, that one Part of a Sentence shall be restrained and expounded by the other; as in *Dier* 240 and 255. And the Case of Sir *George Trenchard* against *Hoskins*. *Winch. Rep.* 91, 92, 93. And therefore the Defendant's Counsel concluded, That the former Covenant should be expounded and limited by the later, and so the Plaintiff had assigned no Breach, and therefore the Replication was insufficient. Thereupon it was answered for the Plaintiff, That though the Cases cited were agreed to, yet here the former Covenant is not, nor cannot be restrained by the subsequent Words, for both the Cases cited in *Dyer* were only an entire Sentence, and not distinct Covenants, &c. And it was agreed that a particular Covenant in Fact may restrain a general Covenant in Law, as in *Noke's Case*. 4 Co. 80. But it was said, That in this Case there was an express Covenant in Fact, which is not, nor cannot be restrained by any other subsequent Covenant, if it cannot be construed as Part of the first general Covenant. And this Difference was taken, That if any restrictive Clause be in the first or latter Part of a Sentence, or in the Beginning of the first, or at the End of the later Sentence, which, in good Sense, may be applied to the one or the other, there it shall extend to both Sentences; but yet if such a Sentence be placed in the middle of one or two Sentences, as in *Cro. Car.* 106. *Crayford* versus *Crayford*, and 495. *Hughes* versus *Bennet*. (Covenant, That he

was

was seized in Fee, notwithstanding any Act done, &c. and that the Lands were of the Annual value of 200 L.) there the Words notwithstanding, &c.) cannot be applied to the Covenant concerning the Value, because they were placed in the middle of the Sentence, and here the Words in the last Covenant (without Interruption, &c.) cannot be applied in Sense to the Covenant that the Lease was indefeasible, for then the Sentence will be insensible, *scilicet*, That the Lease was indefeasible without Interruption of the Defendant. And if it were insensible, yet the Words (without Interruption, &c.) do not take away the Force and Signification of the Word (indefeasible) but it remains an absolute general Covenant as before, and then the Lease being defeated by a Stranger, was a Breach of the Covenant. And so the Replication good; and the whole Court was of this Opinion; and Judgment was given for the Plaintiff. See 1 *Saun.* 51, 52, &c. and *Winch. Rep.* 74, 87. *Napper's Case*, and *ibidem* 93. *Latch. Rep.* 105.

(8) That the Plaintiff was the first Occupant, and not the Defendant.

Repl. II. **P** Recludi non, &c. Quia die qd  
predict. A. M. post motum  
predict. C. M. in Messuagium cum perit  
primo intravit & illud primo occupavit per  
quod eadem A. tunc & ex tunc fuit seisi-  
(Part IV.) E de

de Messuagio p̄dict' cum pertin' in Dñco suo ut de libero Tenemento pro Termino vitay p̄dict' W. M. C. M. & W. C. & eorum diutius viveñ ut prima Occupans inde. Absq; hoc quod p̄dict' G. R. post mortem p̄dict' C. M. in & super p̄dict' Messuagium cum pertin' primo intrabit & p̄dict' Messuagii cum pertin' devenit Occupans, modo & forma prout p̄dict' Defend' superius placitando allegabit. Et hoc, &c. unde per' iudic' & debum suū p̄dict' unacum dampnis suis occasione detentōñ debi illius sibi ad iudicari, &c.

(9) That the Defendant was expelled by the Earl of Essex.

Bar' II. **E**t p̄dict' R. per J. W. Attorñ suum ven' & defend' vim & injur' quando, &c. Et per' auditū Scripti p̄dict' Et ei legitur Per' etiā auditum Conditionē ejusdem Scripti Et ei legitur in hec verba, The Condition, &c. quibus lectis & auditis idem R. dicit quod p̄dictus W. (Actiōñ non) quia dicit quod post confectiōñ Scripti p̄dict' & ante expirationem quatuor annorum p̄dict' in Conditione p̄dict' superius menciōñ scilicet primo die Maii Anno Regni dicti Domini Regis nunc undecimo p̄dict' R. L. suū in conditione p̄dict' superius notat' concessit cuidem R. D. Tenementa p̄dict' in Conditione p̄dict' superius spec' & totum Stat' interesse & Terminū annorum sua que ipse  
idem



idem R. L. tunc habuit in eisdem Tenementis cum pertinentiis ventur' & inextinguat' Miracule cufus quidem concessio idem R. D. in Tenementa predicta cum pertinentiis intravit & fuit inde possessionat' et sic inde possessionat' existens dem R. L. postea scilicet primo die Martii Anno Reg' dicti Domini Regis nunc 13 apud T. predicta fuit post cufus mortem R. Comes C. postea scilicet 20 die Aprilis Anno Regni dicti Domini Regis nunc 13 supradicto apud T. predicta in Tenementa predicta cum pertinentiis in & super possessionem predicta R. D. inde intravit ipsumque R. a possessione sua inde expulit & movit per quod idem Comes fuit inde seiscit' a Diacono suo ut de feodo, Ratione cufus predicta R. D. Assignavit predicta R. L. in forma predicta existens Tenementa predicta cum pertinentiis p & duran' toto residuo Terminum sui de predicta quatuor Annis inde adtunc ventur' & inextinguat' post consecrationem Scripti predicta pacifice & quiete uti & gaudere non potuit secundum formam effectum Conditionis predicta. Et hoc, &c. inde, &c. per' iudic' & Acton, &c.

Rept' Precludi non, quia dicit quod predicta R. L. fuit & assignavit sui Tenementa predicta cum pertinentiis in conditione predicta superius specie pacifice & quiete uti & gaudere licet vel uti & gaudere potuer' duran' quatuor annis predicta in Conditione predicta superius ment' secundum formam & effectum Conditionis predicta Absque hoc quod predicta Comes C. in Tenementa predicta cum pertinentiis in & super possessionem ipsius R. D. inde intravit ipsumque R. a possessione sua

## Bar al Covenant &amp; Condition.

sua inde expulit & amovit put p̄dict R. L. sēd superius allegavit. Et hoc, &c. unde per' iudic' & debum suum p̄dict una cum dampnis suis occasione deten̄cōn debi illius sibi adjudicari, &c.

Rejō, Et p̄dict R. L. sēd ut prius dic quod p̄dict R. Comes H. in Tenementa p̄dict cum pertin' in & super possessionē p̄dict R. D. inde intravit ipsūque R. D. a possessione sua inde expulit & amovit put ipse superius placitando allegavit. Et de hoc pon' se super p'ziam. Et p̄dict W. similiter Ideo, &c.

(10) That the Defendant held over the Possession.

Repl' ss. **P** Recludi non, quia dic' quod terminus p̄dict in Indentur' p̄dict spec' super festum, (&c.) finivit & expiravit. Et idem quē' ulterius dic' quod p̄dict Defend' tēta p̄dict cum pertin' in Indentura p̄dict mēc' ad finem Termin' illius quiere & pacifice non reliquit aut sursum reddidit (Anglice yielded up) sed possessionem tenētorum illoz' cum pertin' a p̄dict Festo &c. usque &c. tunc p' sequen' habuit detinuit & custodivit. Et hoc parat' est verificari unde per' iudic' & debum suum p̄dict unacum dampnis suis occasione deten̄cōn debi illius sibi adjudicari, &c.

(11) Ba

(11) Bar by Surrender of Copyhold  
Lands, &c.

**E**T modo, &c. Et idem Sims defend  
vim & injur quando, &c. Et per  
iudicium Scripti Obi p̄dict. Et ei legitur,  
&c. per' etiam auditum Conditionis ejusdem  
Scripti Et ei legitur in hec verba. ff.  
The Condition, (&c.) quibus lectis & audis  
idem S. dic quod p̄dict J. (Action non)  
quia dic quod pr' Cur post confectiō Scripti  
Obi p̄dict p' Manerio de W. p̄dict tent' fuit  
infra Maner' p̄dict 4 die Aprilis Anno  
Dom 1654. Ad quem diem ipse idem S.  
in Cur p̄dict sursumreddidit in maner' eius  
jisdem J. L. ad tunc existent' Dat Maner'  
de W. p̄dict Pessuagium in conditione p̄dict  
mentonat cum omnibus Atriis Gardinis Cur  
riis (Anglice Backsides) viis cassamentis pro  
ficuis & Conmoditatibus quibuscunque eidem  
Pessuagio spectant ad opus & usum p̄dict  
J. W. hered' & Assign' suorum Cui quidem  
J. ad eand' Cur dictus Dom Maner' p' Sen  
tum suum concessit Tenement' p̄dict cum p  
tin' habend' & tenend' p̄fat J. hered' & Assign  
suis ad voluntat' Domini secund' Cons' Ma  
ner' p̄dict. Et ipse idem J. tunc in Cur  
p̄dict admissus fuit solus Tenens Tenetorum  
p̄dict sic ut p̄fert' sursumreddidit' secund' Cons'  
Manerii p̄dict Adque ad oīa tempora post  
confectiō sursumredditiō p̄dict p̄dictus J. it  
time pacifice & quiete habuit tenuit & gavis  
F 3 sus



ius est Tenentum p̄dict cum p̄tind absque aliquo impedimento secta perturbatione seu interruptione p̄dict S. W. & L. S. in Conditione p̄dict n̄biat' seu alterius eorū seu alterius eorum hered' Exec' & Administr' seu Assign' aut aliquarum person' seu personarū legitime claman' seu qui legitime clamare poter' aliqueum Statum rectum titulum aut interesse de in aut ex p̄missis p̄dict aut aliqua parte inde p̄ de aut subter p̄dict S. aut L. aut alterum eorum aut alterius eorum hered' Administr' aut Assign' sedm formam & effectum Condition' p̄dict Et hoc, (et.) Unde, &c.

Repl' Per  
prior Sur-  
render ad  
usus. Et  
clam' per  
ux'.

Et p̄dict J. W. dic' quod (precludi non) quia dic' quod P̄snuagium p̄dict in Conditione p̄dict mentonatur' est & a toto temp' cuius contr' ment' hoīum non existit fuit parcel' Manerii de W. p̄dict ac dimiss' & dimissibil' p̄ Cop Rotul' Cur' Manerii illius p̄ Dom' Manerii p̄dict vel p̄ Tenentum suum eiusdem Manerii p̄ ced' existend' cuicunque persone sive quibuscunque personis idem capere volenti vel volentibus in feodo simplici seu ad terminū vite vel annorum ad voluntat' Domini sedm Cons' Manerii p̄dict. Et p̄dict J. ulterius dic' quod diu ante confectiōem Scripti Obl' p̄dict quidam E. T. p̄dict fuit seisc' de Manerio p̄dict cum p̄tind unde, &c. in Vinco suo ut de Feodo. Et sic inde seisc' existend' idem E. T. postea & ante confectiōem Scripti Obl' p̄dict scilicet ad Cur' Warod' Manerii p̄dict cent' apud p. infra Maner' ill' 8 die Aprilis Anno Reg' vi

ni Dom̄ Jac nup Regis Anglie, &c. 22  
 coram W. L. gen̄ adiunc Senlo Maner  
 ill' p Cop Rotul Cur̄ ejusdem maner̄ cons  
 cessit Messuag' p̄dict̄ cū p̄t̄id̄ cuiusdam P. H.  
 p Term̄ vite sue ac Remaner̄ inde post de  
 cessum ejusdem P. p̄fat̄ L. S. & hered̄ suis  
 imppetuū virtute ejus quidem Concession  
 eadem P. in Messuag' p̄dict̄ cum p̄t̄id̄ in  
 travit. Et fuit inde seisi' in Dominico  
 suo ut de libero Tenito p Term̄ vite sue  
 ad voluntat' Dñi sedm Cons' Maner' p̄dict̄  
 Remaner̄ inde p̄fat̄ L. S. & hered̄ suis spec  
 tand̄ p̄dictaque P. sic inde seisi' existēd̄ ac  
 Remaner̄ inde p̄fat̄ L. S. & hered̄ suis in  
 forma p̄dict̄ spectand̄ idem L. postea scilicet  
 ad Cur' Baron' p̄nobis H. Com̄ H. J.  
 W. Mil' & R. W. Mil' & Bar' adiunc  
 Dom̄ Maner' p̄dict̄ tenē' apud M. infra Ma  
 ner̄ illum 27 die Aug' Anno Regni dicti  
 Dñi Car nup Regis Angl' p̄mi 17 coram  
 E. M. Gen̄ adiunc Senlo Cur' Manerit ill'  
 venit & sursumreddō in manus Dom̄ Manerit  
 Remanere suum p̄dict̄ de & in Messuag' p̄  
 dict̄ cum p̄t̄id̄ int̄ al' ad opus & usum p̄  
 fat̄ Dñe P. H. p & durand̄ Term̄ vite  
 sue natural'. Et post ejus decessum ad o  
 pus & usum p̄fat̄ L. S. & J. S. tunc ux'  
 ejus p & durand̄ Term̄ vitarum suarum na  
 tural' & utriusq̄ eorum diutius vivend̄ Et  
 post eorum decess' ad opus & usū hered̄ &  
 Assign̄ p̄dict̄ L. imppetuum, Qui quide  
 L. & J. adiunc p̄sēd̄ in eadem Cur' petier  
 se admitti ad remaner' p̄dict̄ de & in Mes  
 suag' p̄dict̄ cum p̄t̄id̄ juxta formam &  
 effectum sursumreddicōd̄ p̄dict̄ quibus Dom̄



Manerit p̄dict per Señlum suum p̄dict per  
 Cop Rot' Cui Maner' ill' concessit inde lei-  
 sū hēd & tenend eisdem L. & J. & hered  
 p̄lat' L. in perpetuum ad voluntat' Dom' le-  
 sund Cons' Maner' p̄dict iuxta formam &  
 effectum sursumreddicō p̄dict Et p̄dict J.  
 ulterius die quod p̄dict L. S. & Domina  
 W. H. postea & ante confectō Scribe' Obē  
 p̄dict scil' primo die Martii Anno Domini  
 1652. apud Paroch p̄dict in Com p̄dict  
 otier' & uterque eorum obiit. Et p̄dict J.  
 W. ulterius die quod post Confecō Scribe'  
 Obē p̄dict nec non post sursumreddicō  
 Messuag' p̄dict p̄dict S. W. eidem J. W.  
 in forma p̄dict fact' scil' 15 die Febr' An-  
 no Regni Dom' Car' secundū nunc Regis  
 Anglie, &c. 19 p̄dict Jam Simons Clamans  
 ius & titulum ad Messuag' p̄dict cum p̄ind  
 pro Term vite sue subter p̄lat' L. S. vir-  
 tute sursumreddicō p̄dict p̄dict p̄lat' L. in for-  
 ma p̄dict fact' in Messuag' p̄dict cum p̄ind  
 super p̄possessionē ipsius J. W. inde intravit  
 & ipsum J. W. a Possessionē sua inde expul-  
 sit amovit & fuit & adhuc leisit' existit in  
 Domū suo ut de libero Tenēto p̄ Term  
 vite sue ad voluntat' Dñi secundū Cons'  
 Manerit p̄dict. Et hoc idem J. W. pa-  
 rat' est verificare unde per' iudic' & debum  
 suum p̄dict unacum dampnis suis occōne de-  
 tenfōn debi ill' sibi adjudicari, &c.

Defend' moxat' in lege; Et p̄ Causis,  
 (&c.) eo quod non apparet p̄ Part' nec per  
 Repl' p̄dict' Id quod p̄dict Id unquam ha-  
 buit bonum & legalem titulum ad terr' & Tenē-  
 ta in Condiō Scribe' Obē p̄dict men-  
 nat'



nat. Et quod p̄dict Repl non est sufficiens  
pro eo quod p̄dict Jo non negavit nec destruit  
titulum p̄dict S. B. Quer' jung' in Hozac.

This was an Action of Debt upon a Bond dated 26 Jan. 1653. with a Condition, That if the Defendant at the next Court of the Manor of *W.* in *Com' S.* should surrender to the Use of the Plaintiff and his Heirs, a Copyhold Messuage with the Appurtenances in *M.* in the said County, Parcel of the said Manor, and procure the Plaintiff to be admitted Tenant thereof, according to the Custom of the said Manor; and also if the said Plaintiff shall and may enjoy the said Messuage without any Let, Suit or Interruption of the Defendant, and of one *Lancelot Simons*, Esq; or either of them, or any other Person claiming any Estate, Right, Title or Interest under them, or either of them, Then, &c. The Defendant after Oyer pleads as above; and the Plaintiff replies as above. To which Replication the Defendant demurred specially, as above; and it was argued for the Defendant, That the Surrender by *L. S.* to the Use of *P. H.* for her Life was void, for that she had an Estate for her Life before, *Et ex consequenti*, the Remainders limited after such a particular Estate, which is void in its Creation, are void also: And then the Surrender enured to the Use of the said *L. S.* and his Heirs, as it was before, and the said *Jane Simons* took nothing by the Surrender. And the Counsel further said, That Copyhold Estates

states shall be regulated according to Estates at the Common Law, as to Grants, Surrenders and Estates in Remainder, &c. if no special Custom be to the contrary, and for that cited *Cro. Eliz.* 297. *Cro. Jac.* 376. *Bul.* 2. 272. And that the first Estate limited by the Surrender to *P. H.* was void; he relied upon *Cholmley's Case*, 2 Co. 50, 51. and *Podger's Case* 9 Co. 107. a. And so he concluded that the first Estate being void, all the Remainders are also void, and *Jane Simmons* had no Title; and so the Replication had assigned no Breach; for which he prayed Judgment for the Defendant. But the Plaintiff's Counsel argued that the Estate limited to *Jane*, was good notwithstanding that the Estate limited to *P. H.* was void, and that by way of a Present Estate, and not by way of Remainder; for they said that a Surrender was in the Nature of a Deed-Poll, rather than of an Indenture, and enured by way of Limitation of Use: And here *L. S.* had limited an Estate to himself and his Wife, which he could not do by Conveyance at the Common Law; and that Surrenders and Admittances have been often construed and taken contrary to the Rules of Conveyances at the Common Law, as in *Cro. Eliz.* 323. *Cro. Jac.* 434. and here the Surrender is to be construed as a mediate Settlement upon the Baron and Feme. And in such Cases the Law had often made Construction, *ut res magis valeat*, *Dyer.* 376. *Cro. Eliz.* 323. Grant of a Reversion when it should happen *post mortem* of the Tenant for Life, is construed a good Grant in present of the

Rever-

Reversion, notwithstanding that the Words seem to be otherwise: And so it ought to be here taken, that the Intent was, That *Jane* and *Lancelot* should have the Messuage jointly for their Lives in Possession after the Death of *Patience*, the Tenant for Life, as by mediate Settlement. And so was the Opinion of the whole Court. And that the Estate of *Jane* was good by way of Present Estate, but not by way of Remainder; and Judgment was given for the Plaintiff *una voce*. See *1 Saun.* 145, &c.

(12) Replication, That the Plaintiff was obstructed in his way by a Tenant of the Defendant's.

The Action was Debt upon Bond for Performance of Articles. After Oyer, and setting forth the Articles, the Defendant pleads Articles performed generally. Repl. *ut sequitur*.

**N.** **E** **T** **P**dict **T.** dic' quod ipse p aliqua  
 palleget' ab Arcone sua pdict habens  
 pcludi non debet quia prest' quod pdict **A.**  
 non pformavit seu pimplevit aliquas Con-  
 vencones seu Concessionones in Articulis pdict  
 content' ex parte sua pformand & pimplend  
 secundum formam & effectum eorundem Ar-  
 ticulor' pdict & ante diem impetrac' hris  
 Original' ipsius **T.** scilicet decimo die Febr'  
 Anno Regni Dni Regis & Dne Regine nunc  
 primo



## Bar al Covenant &amp; Condition.

primo quidam J. S. jun<sup>r</sup> tunc tenens & firmarius p<sup>r</sup>dict J. modo Def. de Clauso suo p<sup>r</sup>dict vocat' Coney Garth-head in L. p<sup>r</sup>dict viam ipsius T. p & trans idem clum et p cund J. modo Def. in forma p<sup>r</sup>dict concess' in eodem Clo penitus obstruxit & obstruxit & ipsum T. ad viam ill<sup>e</sup> h<sup>e</sup>nd vel eadem utend<sup>o</sup> adtunc & ibm impedivit & denegabit contra formam & effectum Articulor<sup>um</sup> p<sup>r</sup>dict Et hoc (&c.) Unde pet' judicium & debum suum p<sup>r</sup>dict unacum dampnis suis occasione detencio<sup>n</sup> Debi ill<sup>e</sup> sibi adjudicari, &c.

Def. moxatur Et quer' jung' in Moxac.

*Note,* By the Articles, the Defendant had granted and agreed with the Plaintiff and his Heirs and Assigns, That for a certain Consideration and Rent, it should be lawful for them at all Times after, to have and use a Way by and through a Close of the Defendant's, and the Plaintiff was to repair the Gate between the Plaintiff's and Defendant's Closes; And the Defendant covenanted that J. S. his Son, when he should attain the Age of Twenty-one Years, should confirm it. Defendant pleads that J. S. his Son had not attained the Age of Twenty-one Years, and that he performed all the Residue as (above) and the Plaintiff replies, as above, &c. And upon the Demurrer it was resolved by the Court, That it was a good Grant of the Way, and not only a Covenant for the Enjoyment as was objected. But secondly it was resolved, That the Replication was ill, not shewing that J. O. the Son had Title to stop

stop it, and then it is only a Trespass, against which the Plaintiff might have Remedy by Trespass, but not Covenant against the Covenantor upon the Covenant ; and perhaps the Son, although he being under Age, farmed the Close of his Father, might have a better Title of his own ; whereupon Judgment was given for the Defendant. *Vide Lev. Ent. 47. and 3 Lev. 305. Vide 3 Lev. 167.* Covenant for quiet Enjoyment of a Garden. Breach, That the Defendant had erected a Dwelling House on Part, by which the Plaintiff could not have the Use of the said Garden, *secundum formam & effectum Dimission' præd'*. Defendant pleads, That *non obstante ædification' præd'*, the Plaintiff *usum Gardini præd' habere potuit secundum veram intention' Dimission' præd. Absque hoc qd' ædificatio præd' aliquo modo impedivit quer'* the Use of the Garden *secundum veram intention' Indentur' præd' Quer' moratur in Lege.* And by the whole Court, the Use of the Garden is the Use of the whole Garden, and not the Use only to pass to the House of Office, as the Defendant had pretended ; and that the Traverse contained more than was alledged in the Breach, *Scilicet, Secundum veram intention' Indentur' præd'* ; and the Court could not understand the true Intention of the Indenture, but only by Words in the Indenture, and therefore gave Judgment *pro Querente.*

*Bar by Conditions (or Covenants)  
performed Specially.*

In Debt, on Bond to perform Covenants in Indentures, after Oyer of the Bond and Condition, the Defendant pleads in Bar, a Lease and Release to Uses, by way of Recital: Thus, *viz.*

**Q**uibus lectis & auditis idem R. dicit quod p<sup>o</sup>dict A. ac<sup>o</sup>onem suam p<sup>o</sup>dict vers<sup>o</sup> eundem Here seu manutenere non debet quia dicit quod Indentur<sup>o</sup> p<sup>o</sup>dict in Condicion p<sup>o</sup>dict superius specificat<sup>o</sup> fact<sup>o</sup> fuit apud Paroch<sup>o</sup> S. Martini in Campis p<sup>o</sup>dict in Com<sup>o</sup> Wido p<sup>o</sup>dict p<sup>o</sup>dict<sup>o</sup> 15 die Aprilis Anno Regni Dom<sup>o</sup> Ec. 3 supradicto inter eundem R. P. per Rosen Roberti P. de interiori Templo London Ar<sup>o</sup> ex una parte & p<sup>o</sup>fat A. P. per nomen Alicie p. Relict<sup>o</sup> Johis P. nuper de Stratfo in Com<sup>o</sup> C. Gen<sup>o</sup> defunct<sup>o</sup> ex altera parte cujus altera<sup>o</sup> partem Sigillo p<sup>o</sup>dict<sup>o</sup> A. Sigillat<sup>o</sup> idem R. hic in Curia p<sup>o</sup>ferre cujus Dat<sup>o</sup> est eisdem die & Anno in qua quidem Indentur<sup>o</sup> recitand<sup>o</sup> quod cum p<sup>o</sup>dict J. P. Gen<sup>o</sup> Pater ejusdem R. P. per Indentur<sup>o</sup> suam gerend<sup>o</sup> Dat<sup>o</sup> 11 die Novembr<sup>o</sup> Anno Dom<sup>o</sup> 1694. pro Consideracione in ead<sup>o</sup>m Indentur<sup>o</sup> mencionat<sup>o</sup> concessisset bargantizasset & vendidisset eidem Roberto P. tota ill<sup>o</sup> duo Clausa sive parcell<sup>o</sup> Terre



Terre sive prati vocat' Long Mead continen'  
 p estimacionem 11 acras & 2 rodas Angl'  
 Rodds sive essent plus sive minus que quidem  
 Clausa prati tunc vel nuper antea fuer' in  
 Tenura sive occupatione R. S. assign' sive  
 subtenen' suor' et fuer' scituat' facien' & ex  
 isten' in Paroch' & Maner' de L. in eodem  
 Comd C. acetiam omnia & singula Messuag'  
 Terras Tenementa & Hereditamenta sua p  
 sive de quibuscunque nominibus naturis qua  
 litat' sive numero acrar' eadem sive aliqua  
 eorū fuer' vocat' sive continebant scituat' fac  
 ien' & existen' infra separal Paroch' villas  
 Hamlett' sive p'inc' de L. p'dict' ac de S. &  
 R. in eodem Comd C. sive in aliquo seu ut  
 troque eorū ac omnia & singula Messuag'  
 Terras Tenementa & Hereditamenta ipsius  
 p'dict' J. P. scituat' facien' & existen' in eodem  
 Comd C. ac omnia Domos edificia erectōn'  
 Structur' Horrea Stabula Columbar' Molens  
 vin' Garbin' Pomar' areas Curtilag' atria  
 Terras acris posterior' Anglice Backsides Ter  
 ras prata pastur' Mesur' Campos Comunas  
 Commun' pastur' Eskoveria Pozas Parisc' vasta  
 Terras vastat' Boscos subboscos Silvas Copi  
 as arbores Naherem' ac omnes al arbores  
 aquas aqueduc' aquecursus stagna Piscaria  
 vias Semitas estimenta proficua Commoditat'  
 privileg' beneficia emolumenta & p'inen' que  
 cunque eisdem Clausis Messuag' Terris Te  
 nementis & hereditamentis sive aliquibus sive  
 utrique eorū sive alicui parti sive parcell' eo  
 rundem inciden' appenden' sive aliquo modo  
 pectan' sive pertinen' sive unquam p'antea  
 dimiss' tent' sive usualiter seu comuniter ga  
 vis'

vis' cum eisdem vel accepta adjudicata sive reputat' ut pars parcell' sive membrum inde, sive cum eisdem gavis' aut cum eisdem vel quibullibet eorū pertinend, ac Reversion' & Reversiones Remaner' & Remaneria Reddit' & Servitia omnium & Singulor' pmissor' Habend' & Tenend' eadem Clausa Messuag' Terras Tenementa & hereditamenta cum eisdem & quibullibet eorum ptinend' p'dicto R. P. Executor Administrator & Assign' suis a 29 die Septembris tunc ult' p'terit' usque ad plen' finem & Ternin' unius Anni plenat' complend' & finiend' ad & sub annual' reddit' id. (si idem legitime petie' foret) Recitandoque etiam Quod cum p'dict' Joes P. p' Indentur' suam geren' Dat' 12 die Novembris Anno Regni Dñi, &c. 3 suprad' p' consideracione in eadem Indentur' mencionat' concessisset relaxasset alienasset & confirmasset eidem R. P. omnia & singula clausa Messuag' Terras Ten'ta & al' p'missa suprad' in & p' eandem Precitat' Indentur' concess' bargani'z sive vendit' cū eorum & quibullibet eorum ptinen' & totum Statut' Jus Titulum interesse ulid' & fiduciam Statut' possession' proprietat' clameid' & demand' quecunque ipsius p'dict' J. P. de in & ad eadem seu ullam ptem pcell' vel membrū eorundem Vend' & Tenend' p'dict' Clausa Messuagia &c. & omnia & singula alia p'missa in & p' eandem Indentur' designat' mentionat' sive intens' fore concess' bargani'zar' sive vendit' relaxat' alienat' & confirmat' eidem R. P. & hered' suis ad usum intention' & proposit' in eadem Indentur' mencionat' limitat' & declarat', viz. ad ulid' p'dict' J. P.



J. P. & Assign suor p termino vite sue  
 naturat absque impericione valli & post ejus  
 decessum tunc ad usum ejusdem R. P. heres  
 & Assign suor imperpetuū. Et p eandem  
 Indentur testatū existit quod R. P. pro &  
 in cons' 5 s. pmanib' solui' quozum reception'  
 ipse cognovit & de eisdem acquietabit predictā  
 Aliciam aceriam in Cons' Resignationū totius  
 sui Juris existentis administratricis nuper viri  
 sui pdicti J. P. & in plena recompens' sa-  
 tisfaction' & Cronerationū totius Juris & ti-  
 tuli sui Dotis de in & ad Melluag' Terr'  
 Tenet & hereditariū vici J. P. & pro di-  
 vers' al bonis causis & cons' dimississet concessis-  
 set & ad Firmā tradidisset & per eandem Inden-  
 tur dimisit, &c. pdict' Alicie omnia Terr'  
 Tenementa & Hereditamenta pantea recitat'  
 vel content' in Scriptis dimissionū & Relaxati-  
 onū pmentionat' Habend' & tenend' eadem  
 dimissa pmissa & quamlibet partem & par-  
 celi' eorū cum p'ineis eidem Alicie Executor'  
 & Assign' suis a die Datus ejusdem Inden-  
 ture usque ad plenū finem & Terminum 500  
 Annor' abinde p'or' & immediate sequend'  
 plenar' complend' & finiend' Reddend' & solvend'  
 annuatim & quolibet anno durante termū  
 pdict' ad Festū Annunc' B. M. M. p'fat' R. P.  
 heres & Assign' suis Reddit' unius grani pi-  
 peris & legitime petii' foret Et idem R. P.  
 p se heres & Executor' suis convenit & pro-  
 misit ad & eid' p'fat' A. Executor' & administat'  
 suis p Indentur pdict' quod ipse pdict' R.  
 fuit litime seiscit' de bono & perfecto Stat' in  
 Feodo simplici in pmiss' in eadem Inden-  
 tur pmentionat' & hūc bonū potest & au-  
 (Part IV.) G rhorizat'



thoritat' facere eandem dimissionem & concessionem  
 Proviso tamen & sub Conditione in eadem  
 Indentur content' quod si predict' R. P. heres  
 Executor vel Assign' sui annuatim & quolibet  
 Anno durante vita predict' Alicie bene &  
 fidei solveret vel solvi causaret eidem A.  
 ad vel in comuni aula parloria Anglice  
 the Common Dining-hall interioris Templi  
 London annuat' summam 100l. legalis monete  
 Magni Britannie p duas equas solutiones  
 in Anno ad Festum Natale Dni nri  
 Christi & Pativitat' Johis Baptiste prima equal'  
 solutionem inde fore ad natal' Domini  
 nri Christi prior' sequens dat' ejusdem Indentur  
 absque aliqua deductione defalcatione sive  
 diminutione inde pro vel in respectu aliquor'  
 censuum assessorum vel Impositionum ordinat'  
 vel extraordinar' sive alicujus al' Materie  
 Cause vel Rei cujuscunque tunc eadem  
 dimissio & tot' Stat' Jus Titl' & Interesse  
 dicte Alicie in & ad predict' Messuag' Terras  
 Tenementa & hereditamenta foret nulla & vacua  
 ad omnes intentiones & proposita Et idem  
 R. P. p eandem Indentur p se heres &  
 Executorib' suis convenit promisit & agreebat  
 ad & cum placet Alicia quod ipse idem  
 R. heres Executores vel Assign' sui vel aliquis  
 vel unus eorum bene & fidei solveret vel solvi  
 causaret eidem Alicie eandem annuat'  
 summam 100l. absque aliqua deductione  
 sive defalcatione quacunque in modo & forma  
 predict' Et ulterius agreeat' fuit quod interim  
 & usque aliqua infractio predict' Conditionis  
 contingeret fieri licitu' foret eidem R. P. heres  
 executoribus & Assign' suis respective habend'  
 & gaus

& gaudens omnia & singula pmissa pdict absque ulla legali impediment' secunda negationem sive interrupcionem pdictre Alcie sive alicujus plone clamand sub illa prout p eandem Indentur' plenius apparet Que sunt omnia Convencon' concess' Articuli clausa provision' solucion' Conditio' & agreamenta quacunque in Indentur' pdict content' Et idem R. P. a tempore Consecration' Indentur' pdict usque diem exhibition' Wille pdict ipsius R. pdict in hac parte bene & vere observavit pformavit pimplevit solvit & custodivit omnes & singulas Convencon' Concession' Articulos Claus' provision' solucion' Conditio' & agreamenta ex parte ipsius pdict R. observand' pformand' pimplend' solvend' & custodiend' secundum formam & effectum Indentur' pdict in Cur' prolatus. Et hoc idem R. P. arat' est verificare unde petit Judicium pdict R. actionem suam pdict inde vers' eum ere seu manutenere debeat, &c.

o this Plea the Plaintiff replied, (with *protestando non performavit*) That he had not paid 50*l.* Part of the said yearly Rent: And the Defendant rejoins a Tender. *Vide* 5 Co. 114. Lilly 117. *post* N<sup>o</sup>. 44.

### (3) Bar by General Performance of Covenants, &c.

(13.) ff. **D**E B T on Bond to perform Articles. After Oyer of Bond, Defendant sets forth the Articles, prout p Articulis p̄d̄ plenius liquet & apparet Que sunt omnia Conventiō Articuli Clausule & Agreement in Articulis p̄dict content' ex parte ipsius J. S. observand' p̄formand' p̄implend' & custodiend' Et idem J. ultius dicit quod ipse idem J. semp a ted' confectione Articulorum p̄dict usque diem impetrat h̄is Original' ipsius B. bene & veraciter observabit p̄formabit p̄implebit & custodivit omnia & singula concessiō Articulos & Agreement in eisdem Articulis content' que ex p̄te ipsius J. observand' p̄formand' p̄implend' & custodiend' fuer' secundum formam & effectum Articulorum p̄dict Et hoc parat' est verificare unde pet' Judic' & p̄dict B. Actionē suam p̄dict inde versus eum habere debeat, &c.

(14.) ff. **P**rouit per Indentur' p̄dict plenius liquet & apparet Et dicit idem B. quod ipse idem B. post sigillacon' & confectionē Indentur' p̄dict usque diem impetrat Wille p̄dict p̄formabit p̄implebit & custodivit omnes & singulas conventiōes concessiones Articulos & Agreement ex parte ipsu



ipſius H. pſormand pimplend & cuſtodiend ſecundū formam & effectū Indentur pōict  
Et hoc (&c.) Unde, &c.

Et pōict J. dic (precludi non) quia pro-  
teſtando qđ pōict H. non perſormabit ſeu per-  
implebit aliqua Convenções Conceſſiones  
Articul ſeu Agreement in Indentur pōict  
ſpec ex parte ſua pſormand ſeu pimplend  
puc pōict H. ſupius plitando allegavit p  
plito dic quod poſt confeſſioiū Indentur  
pōict & ante diem impetrac Wille pōict i-  
dem J. p̄textu, &c. Et ſic aſſign Breach.

(15) Conditions performed, pleaded by an  
Heir or Executor.

**A.** P̄out per Indentur pōict plenius ap-  
paret Et idem A. ulterius dic qđ  
pōict R. in vita ſua a eed confeſſioiū In-  
dentur pōict & pōict A. poſt mortem ip-  
ſius R. uſque diem impetrac h̄is Original  
ipſius J. bene & fidelit' obſervaver' pſormaver' p-  
implever' & cuſtodiver' oies & ſingulas Conven-  
ſion conceſſion p̄viſion Clausulas Solutiones  
Conditiones & Agreement in Indentur pō-  
ict ſupius ſpec ex parte pōict R. Hered  
vel Aſſign ſuorum obſervand pſormand pim-  
plend & cuſtodiend ſecundum formam & ef-  
fectum Indentur pōict Et hoc &c. Unde  
&c.

(16) The like by an Executor.

**P** Rout per Indentur' p'dict' plenius apparet Et idem G. ulterius dic' qd p'dict' W. & R. a confectio[n] Indentur' p'dict' duran[te] vita p'dict' W. & idem R. in vita sua post mortem p'dict' W. acceriam idem G. post mortem p'dict' R. usque diem impetrat' h[ab]is Original' p'dict' T. & S. bene & fidelit' observaver' p[ro]formaver' perimplever' & custodiver' ac uterque eorum observabit p[ro]formabit p[ro]implevit & custodivit omnes & singulas convention[es] p[ro]mission[es] concessio[n]es articulos & agreamen[ta] in Indentur' p'dict' sup[ra]ius spec[ie] ex parte p'dict' W. & R. Exec[utor] & Assign' suorum observand' p[ro]formand' p[ro]implend' & custodiend' secundum formam & effectum Indentur' p'dict' Et hoc, &c. Unde, &c.

Repl. Et p'dict' T. & S. dic' quod ipsi p[er] aliqua p[ro]allegat' ab Action' sua p'dict' h[ab]end' p[ro]cludi non debent quia p[re]stando non cogn' aliqua p[er] p'dict' G. superius allegat' fore vera p[ro] placito dic' quod p'dict' R. in vita sua, (&c.)

(17) *Aliter* Repl. by an Administrator as to the remaining Covenants, &c. in a Defeasance upon a Recognizance.

**E** T idem R. G. ulterius dic' quod p'dict' T. S. in vita sua ac heres ejusdem T. ac p'dict' W. P. post mortem ejusdem

ejusdem T. S. existens Administrator bonorum & catallorum que fuer' ejusdem T. S. qui obiit Intestat', &c. hucusque bene & fidelit' observaver' performaver' perimpler' & custodiver' omnia & singula ab Conventiones Concessionum Articulis & Agreament' comprisat' mencionat' & content' in p'dicta Indentur' gerend' Dat' p'dict' rrr. die Octobr' Anno 32. supradicto ex parte p'dict' T. S. Hered' Executor' & Admin' suorum vel alicujus eorum observand' performand' perimplend' & custodiend' secundum formam & effectum ejusdem Indentur' per quod p'dict' script' Obl' 3000 l. p' p'dict' T. S. in vita sua in forma p'dict' Recogn' virtute p'dict' Indentur' Deseazantie m'is forisfact' existit neque bona & catalla p'dict' T. S. in manibus & custod' p'dict' W. H. p'textu scripti ill' onerari debent Et hoc paratus est verificare Unde pet' Judic' & Debum suum p'dict' unacum Dampnis suis occasione descension' Debi illi sibi adjudicari, &c. Dese Demurr'.

The Count was upon a single Bill against an Administrator; Defendant pleads, That the Intestate was bound in a Recognizance, over which he had not Assets: Plaintiff by Replication sets forth an Indenture of Bargain and Sale, &c. *Prout per Indentur'*, &c. and confesses the Recognizance, and then sets forth an Indenture of Deseazance upon the Recognizance, and then pleads over as above. And the Defendant demurs, the Plaintiff joins in Demurrer, and Judgment for the Plaintiff.



2de Co. Ent. 146, 147, &c. And 5 Co. 2d.  
Harrison's Case.

(18) *Al Sci' fac' sur Recogn' pur performance de Covevants.* Performance of several Covenants pleaded after Oyer, &c. and that the Lands were of the yearly Value of 12 l. and free from Incumbrances, &c. *Repl.* That they were not of the yearly Value of 12 l.

*Repl. ff.* **E**T pōict R. dic' quod ipse per aliqua pzeallegat' ab execuōs ne sua pōict de pōict 500 l. hend' pcludi non debet quia protestando quod pōict J. non observabit pformabit pimplevit seu custodibit aliqua Conventōnes Concessionēs Articlos Clausulas Sententias seu Agreementa in Inveniuntur pōict superius spec' ex parte sua observand' performand' pimplend' & custodiend' secundum formam & effectū Inveniuntur ill' pnt pōict J. superius allegabit p plico idem R. dic' quod omnia & singula pmissa per Inveniuntur pōict dat' concess' bargainat' & vendit' die dat' Inveniuntur ill' non fuer' clari annui valoris 12 l. legalis monete Angl' pnt pōict J. supius allegabit Et hoc per' quod inquiratur p Priam Et pōict J. alii' Ideo, 5c. Co. Ent. 635.

(19) That

(19) That he performed the Covenants specially, and as to the Covenant of not Ploughing the Lands, he pleads the Statute of 5 Eliz. of holding Lands in Tillage, &c.

**E**T ulterius idem W. quoad Conven-  
tionem predictam concernentem arationem vel  
seminacionem aliquarum terrarum superius Dis-  
missis que non fuerint aratæ & seminatæ per præ-  
dictum T. W. idem W. dicit quod per quendam  
Actum in Parliamento tenentem apud Westm. 12  
die Jan. Anno regni Dñe Eliz. nuper Regi-  
ne Anglie, &c. quinto Inauguratæ & Stabilite  
fuit quod ab & post Festum Annunciatæ  
beate Marie quod esset in Anno Dñi 1564.  
omnia talia terræ & fundæ vel tantum in  
quantitatibus earundem put in aliquo Villagio  
Hamlet. Dominio loco cognitæ sive Parochie  
infra regnum Angliæ vel Wallie aratæ fuerint &  
cultura posita in aliquo uno anno & sic in  
cultura custoditæ per spacium quatuor annorum  
in aliquo tempore post Festum Scti Georgii  
Marci Anno 20. regni nuper Regis Hen.  
8. in aliquam terram Dñicam Monasteriorum  
Priorat. & Domorum Religiosarum in dicto Ac-  
tu recitatæ dictoque nup. Regi H. 8. in An-  
no 27. Rñi sui datæ essent aratæ usitatæ &  
in cultura custoditæ imppetuum secundum Pa-  
trem sibi & consuetæ Patrie per Occupatores  
sive Occupator. eorum absque fraude vel col-  
lusione

Iussione sub pena quod quislibet Offendens contra formam Act' p'dict' perderet & forisfaceret annuatim pro qualibet acr' decem solidis Ac insup p'eundem Actum Ordinatur fuit quod positio aliquarum terrarum sive tenozum ex tunc impofterum a Pastur' in Cultur' secundum tenorem & effectum illius Act' in aliquo modo non exienderet fore aliquam causam fractionis sive forisfactur' alicujus Obligaconis Convenconis Soluconis sive Condiconis fact' aut impofterum fiend' int' aliquas p'sonas corpora politica vel corporat' que aliquo modo fuit aut esset fuer' aut essent repugnans sive contr' Act' p'dict' p'ut in eodem Actu int' al' plenius apparet Et ulterius idem **M.** in facto die quod Octogint' acr' terre de p'dict' Maner' cum pertinet arat' fuer' & cultur' posit' in uno anno & sic in cultur' custod' p' spaci' quatuor annorum int' edicoem Act' p'dict' & Festum S'ci G. Martij in dicto anno 20 regni dicti nup' Regis H. 8. Et quod eodem 80 acr' terre non fuer' Dñical' alicujus sive aliquorum Monasteriorum Priozar' sive Domozum Religios' in dicto actu dicte Dñe Regine nunc spec' Ac quod Convencon modo & forma p'dict' fact' concernend' non aration' & seminacon' Premiss' est Actui p'dict' repugnans & contrari' Per quod idem **M.** Occupator Premissorum existend' virtute & auctoritate Act' p'dict' post Festum Annunciacon' be Marie quod fuit in p'dict' Anno Dñi 1564. scilicet 4 die Martij Anno regni dicte Dñe Regine nunc 6 secundum formam & effectum Actus p'dict' arabit & seminabit 40 acr' terre de p'dicta 80 acr' terre que non consuevit fuer' arari



arari vel seminari pantea per p̄dict W. B.  
put ei bene licuit, &c. Vide Co. Ent.  
231. b.

(20) Bar, That before the Original brought  
the Indentures were cancelled by Con-  
sent.

**E**t p̄dict W. p H. B. Attoꝝ suum  
venit & defend vim & insur' quando,  
&c. Et per' auditum scripti p̄dict Et ei le-  
gitur, &c. per' etiam auditum Indorsamenti  
eiusdem scripti Et ei legitur in hec verba,  
The Conition, &c. Quib' Icis & auditis  
idem W. die quod p̄dict R. Accon' suam  
p̄dict versus eum here non debet Quia die  
quod bene & veru' est quod p̄dict script'  
Obl' 200 l. p p̄fat' W. fact' fuit fact' die  
& anno supradictis apud L. in Paroch &  
Warda p̄dict & p p̄formation' quarundam  
Conventio' compilat' in quibusdam Indens-  
tur' int' p̄dict R. & J. ex una parte & ipsum  
W. ex altera parte gere' dat' eisdem die  
& anno, Et idem W. ulterius die quod  
Indentur' p̄dict in Condition' p̄dict supius  
spec' post confectio' scripti p̄dict & ante di-  
em impetrac' h'is Original' ipsius R. scilicet  
tertio die April' anno regni dicti Dñi Re-  
gis nunc 8. apud L. in Paroch & Ward  
p̄dict p consensum & assensum p̄dict R. &  
p̄fat' W. cancellat' fuer' Et p̄dict R. In-  
dentur' p̄dict cancellavit & penitus evacuic.  
Et hoc, &c. Unde, &c. Quer' Demurr' &  
Def. jung Et Iudic p quer'.

Note,

## Bar al Covenant & Condition.

*Note,* This Bar was ruled to be ill, because he did not aver Performance of all the Covenants before the Indentures were cancelled.

(21) Defendant pleads in Bar an Accord and Payment in Satisfaction of the Covenants.

**E**T pōict R. p R. B. Attorn suum veni & defend vim & injur' quando &c. Et dic' quod pōict R. Action suam pōict versus cum Here non debet quia dic' quod post confectiōem scripti pōict & ante aliquam causam Actionis ipsius R. occasione aliquarum Conventiōem in script' pōict menciō scilicet 20 die April' Anno Dñi 1695. supradict' apud D. agreeat' fuit int' p̄fari' Ri. & Ro. quod ipse idem Ro. solveret eidem Ri. 30 l. legalis monete Angl' in plenā satisfactiōem & exoneratiōem Conventiōem illi Ac pōict R. eandem 20 l. de p̄fari' Ro. adtunc & ibm in plena satisfactiōem & exoneratiōem Conventiōem illi recepit & acceptavit Et hoc, &c. Unde, &c. Demurr' inde.

This Action was upon a Covenant in an Indenture between the Plaintiff and Defendant, and the Exception to the Bar was, That the Concord, &c. was pleaded to be in Satisfaction of the Covenants, (which were not broken at that Time, as the Defendant himself had alledged) and that cannot be ;

be; for the Covenants being created by the Deed, may not be discharged, but by Deed: But Accord with Satisfaction is a good Plea in Satisfaction and Discharge of Damages upon a Covenant broken, and so was the Opinion of the Court, and Judgment given accordingly against the Opinion in *Rabbet* and *Stoker's Case*, 2 *Roll. Rep.* 187. And for Authorities to maintain this Judgment, *Vide* 2 *Cro.* 99. *Alden* and *Blague's Case*. *Palmer* 110. *Kobard's* and *Stoker's Case*. And 6 *Co.* 43. b. Note, An Exception was taken to the Declaration; That the Plaintiff had not shewn in it the Effect of the Agreement between the Plaintiff and his Tenant *P.* therein mentioned; *Sed non allocatur*; for if an Issue should be taken upon any Matter relating to that Agreement, it might appear upon the Evidence. *Vide* 1 *Lut.* 358, &c.

(22) Aliter Bar per Concord, & Repl. per nul tiel Concord.

A. **E**t modo ad hunc diem (et.) Et idem R. defend vim & injur quando, &c. Et dic quod pōict J. S. (Accon non) quia ptestando quod ipse idem R. pōicto tempore confectio Indentur ill fuit plenam potestatem & litimam auctoritatem dimittere & concedere pōict Domum Panerii & omnia & singula Premiss cum pūid superius recitat' fore pōimiss secundum formam & effectum Indentur pōict pro pōito tamen idem R. dic



die quod post confectiō Indentur' p̄dict scilicet primo die Maii Anno regni Dñi Jac' nunc Regis Angl' 8. apud W. sup montem in Com' L. p̄dict talis Concordia int' p̄dict J. S. & ipsum R. B. habebatur scilicet quod idem R. solveret p̄fat J. in plenam Satisfactionē & exoneraciō Convention' p̄dict & omnium & singulorum Conveniō & Agreeamenti' in Indentur' p̄dict spec' 12 l. Itemqz R. adtunc & ibidem supinde solvit p̄fat J. p̄dict 12 l. ac p̄dict J. easdem 12 l. de p̄fat R. attunc & ibidem in plen' Satisfactionē & exoneratiō Convention' ill' & omnium & singulorum Conveniō & Agreement' in Indentura p̄dict acceptabit & recepit secundum formam Concordie p̄dict Et hoc parat' est verificare Unde per' Judic' (si actio &c.)

Repl, Et p̄dict J. dic' (p̄cludi non) quia dic' quod non habebatur aliqua talis Concordia int' ipsum J. & p̄fat' R. qual' in Barr' supius allegatur Et hoc per' quod inquiratur p' P̄nam Et p̄dict R. B. filii' Ideo, &c.

This was an Action of Covenant upon a Lease for Years made to the Plaintiff. And the Defendant covenanted that he had full Power to Demise; and the Plaintiff for Breach says, That the Defendant had not full Power to Demise. To which the Defendant pleads in Bar, as above, *Vide Co. Ent.* 116, 117. and 9 *Co. fo.* 60 b. Where it appears that the said general Assignment of Breach of the Covenant was sufficient; for it lies not in the Notice of the Plaintiff to shew what Person

son had the rightful Estate in the Tenements, and therefore it was sufficient for the Plaintiff to say generally; that the Defendant had no rightful Estate, and then the Defendant might shew his Estate, if he had any.

## (4) Bar, &c. about Non-payment of Rent.

(23) Quod quer' nichil habuit in Tenementis tempore Dimissionis.

**N.** **E**T p<sup>o</sup>ict S. p C. T. Actorū suūm Similis Bar.  
 veni & defend vim & injur' quando, Et Repl.  
 &c. Et dic' quod J. H. (Action non) quia qd' habuit.  
 dic' quod p<sup>o</sup>ict J. H. tempore Dimission' p<sup>o</sup>ict Pl. Gen. 256.  
 sup<sup>o</sup>ius fieri supposit' nichil habuit in Tenementis p<sup>o</sup>ict cum p<sup>o</sup>id. Unde suppon' Dimissionem illi fieri Et hoc, &c. Unde, &c.

*Repl.* This was an Action of Debt for Rent, upon two Demises, and the Defendant pleaded in Bar as above, and the Plaintiff replied by a Demise to him from the Lord Wotton for 41 Years, *prædict' Domino W. adtunc & ibidem plenam potestatem jus & titulum ad Præmissa dimittend' pro prædict' Termino 41 annorum habente*; by Virtue whereof the Plaintiff entered, &c. and made the several Demises to the Defendant, *prout, &c.* To this the Defendant demurred.

And

## Bar al Covenant & Condition.

And it was objected, That the Replication was insufficient, not shewing that the Lord *W.* was seized in Fee, or of some other Estate, empowering him to make the Lease; and the Court said that it was not good upon a Demurrer. Then an Exception was taken to the Bar, That it was *tempore Dimissionum prædicti nil habuit*, &c. whereas it ought to be *temporibus*, but the Court said *tempore* would serve as well as *temporibus*; but resolved the Bar was insufficient, for he ought to have pleaded distinctly, viz. That the Plaintiff *nil habuit* at the Time of the first Demise, nor at the Time of the second, for otherwise it was dubious. Then the Defendant's Counsel excepted to the Declaration, for that no Place is laid for the Messuage and Demised Premises, only 'tis said, *Quæ præmissa sunt scituat' & existen' in & super Acclivitatem de Hamstead, Anglice*, the Rise of Hamstead Hills, and this could not be taken for a *Vill*, or Place known out of a *Vill*, and that it ought at least to be *apud Acclivitatem*, &c. by *Pollexfen*, Chief Justice. But three of the Judges agreed that it was sufficiently laid, and that the Form was not varying in Sense from the common Form, and that *in & super* might serve as well as *apud*. So Judgment was given for the Plaintiff. *Vide 2 Ven. 251, &c.* and also 270. See *Yelv. 277*.

Bar, *Qd' quer' nichil habuit in Tenementis tempore Dimissionis*. Repl. *Qd' T. fuit seisit' de Tenementis qui levavit finem ad usum Quer' pro vita, qui sic seisit' dimisit Def. Rejo. Qd' Quer' non fuit seisit' Tho. 152, 153.*

*Similis*



*Similis Bar, Repl' quod habuit & Issue. Pl. Gen. 256. Defendant pleads, That the Lessors had not a lawful Right or Interest at the Time of the Demise: Plaintiff demurs. Lev. Ent. 74. And upon the first Argument, Judgment was given for the Plaintiff by the whole Court, for it is no Plea against the Estopple by the Indenture. See 3 Lev. 146. Heath versus Vermeden.*

## (24) Non Dimisit.

**¶** **Q**uoad part' mutuat' non debet (et.)  
Et quoad al' 4 l. de pōict 8 l. resis  
Idem A. dic' quod pōict C. non Dimisit  
eidem A. Nels' pōict cum pōict in forma  
qua idem C. supius vers' eum narrabit  
Et de hoc, et.

*Similis Bar qd' Ballivus non Dimisit. Rast. Ent. 175. Similis Bar, Idem 176. Vide 1 Mo. Intr. 205. See after concerning Repairs.*

## (25) Non concessit annum reddit'.

**¶** **E**t pōict C. p R. T. Accorid suum  
ben' & defend' him & injur' quando  
et. Et dic' quod Ri. non concessit pōict An-  
nuitat' sive annual' Reddit' 6 l. 13 s. 4 d. per  
scriptu' pōict pstat A. P. p Termino vite  
eiusdem C. put pōict A. per Parc' suam  
pōict supponit Et de hoc pōid se super P'iam  
Et pōict A. Alit' Ideo, et.

(Part IV.)

H

(26) Quoad

(26) Quoad part' nul Rent arrear.)

Vide Pl.  
Gen. 278.Quoad re-  
sid' qd' le-  
vavit per  
distress, &c.

ff. **E**t pōict A. in ppr' persona sua ven-  
(sc.) Et quoad 40 l. quas pre-  
dict R. supius p Parr' suam pōict suppon-  
ei aretro fore de Firma pōict p pōict tribus  
annis pōict sex annorum Idem A. dic' quod  
nichil inde pstat R. aretro existit put pōict  
R. p Parr' suam pōict supius suppon Et  
de hoc pōnd se super P'iam Et pōict R.  
Alit' Et quoad 40 l. resid' quas pōict R. su-  
pius suppon ei aretro fore de Firma pōict  
p pōict tribus ul' annis pōict sex annorum  
dic' quod pōict R. (Action' non) quia dic'  
quod idem R. intravit in Maner' pōict &  
diversa bona & catalla ipsius A. infra Maner'  
ill' existēd viz. decem quarter' p'sarum (sc.)  
noīe districtionis p eisdem 40 l. cepit & pe-  
nes se adhuc detinet Et hoc (sc.) Unde  
(sc.)

Repl. Et pōict R. dic' quod ipse per ali-  
qua pallegat' ab Action' sua pōict de pōict  
40 l. habend' pcludi non debet quia dic' quod  
ipse non cepit Catalla pōict nomine Distric-  
tionis p eisdem 40 l. put pōict' A. supius  
allegavit Et hoc per' quod inquiratur per  
P'iam Et pōict' A. Alit' Ideo sc. Vide Pl.  
Gen. 273, 278.

ff. Et pōict' A. B. per W. D. Acc' suum  
Alit' per di- ven & def. vim & injur' quando, &c. Et.  
versas Di- dic' quod pōict' R. D. post Dimission' pres-  
trictiones. dict' levavit pred 40 l. p diversas districtiones  
super

super ipsum R. B. in tenta predicta cum peritiam facit. Et idem R. B. dic' quod ipse non debet prefat R. D. pred 40 l. nec aliquem denar' inde in forma qua idem R. D. superius versus eum narrabit Et de hoc pon' se super p'iam. Et pred R. D. simi' Ideo, &c. Vide 1 Brown. 200. Tho. 154. 428. Pl. Gen. 253. Hanf. 108.

(27) Qd' quer' expulit Des.

**A.** **E**t pred A. in prope' persona sua veni' & defend' vim & injur' quando &c. Et dic' quod ipse de deho pred Virtute Dimission' pred onerari non debet quia dic' quod pred B. post pred Fest' P. ante aliquem Terminum solucio' alicujus parcell' ejusdem Reddit' ipsum A. de Maner' pred cum peritiam expulit & amovit. Et hoc (&c.) Unde &c.

Repl Et pred B. dic' (precludi non) quia dic' quod ipse non expulit nec amovit pred A. de Manerio pred cum peritiam put idem A. superius allegavit. Et hoc per' quod inquirat' p p'iam. Et pred A. simili' Ideo, &c. Vide Br. Red. 260. Pl. Gen 252. 279.

**A.** Action' non, &c. quia dic' quod pred C. post tempus Dimission' pred faci' & ante pred Festum S. M. Ann' &c. intravit in Tenementa pred cum peritiam super Possession' ipsius A. & ipsum A. inde expulit & eiecit. Et hoc, &c. Unde, &c.

Et pred C. dic' (precludi non) quia dic' quod ipse non intravit in Tenementa pred cum peritiam put pred A. superius allegavit.

H 2

Et

Aliter per entry & Expulsion.



Aliter per  
entry expul-  
sion and con-  
tinuance del  
Possession.

Et hoc per quod inquit p p'iam, &c. Vide 2 Mo. Intr. 235. Pl. Gen. 252. 278.

¶ Et p'dict' R. J. per J. B. Attornd suud  
ven' (&c.) Et die (Action non) quia die quod  
12 Messuag 300 Mer' Terre & 20 s. Reddit'  
cum perit in C. fac p'dict' Maner' de C.  
Et ulterius die quod post p'dict' 12 diem M.  
& ante p'dict' Festum Scd M. scilicet 20 die  
J. Ann, (&c.) p'dict' P. intravit in p'dict' 12  
Messuag parcelle p'dict' Maner' de C. in rco  
Cond L. & ipsum R. inde expulit & possessionem  
suam inde ab eodem 20 die J. usque p'dict'  
Fest' Scd M. continuabit. Et hoc, &c. Un-  
de, &c. Vide Thomp. 173. 191. 220. Clif. 150.  
Sile al' pari' ante aliquod Reddit' debet' Bro.  
Red. 231. Pl. Gen. 279. Quod J. in vita in-  
travit & p tota occupavit. Rob. 235.

(28) Qd' solvit ad Festum. Et sic non debet.

¶ **E**t p'dict' A. per T. G. Attornd suum  
ven' (&c.) Et die (Action non) quia  
die quod ipse solvit p'fat' B. p'dict' 10 l. ad  
p'dict' Fest' P. & scd M. equis porcionibus  
videlicet apud M. p'dict' Et sic die quod ipse  
non debet p'fat' B. eisdem 10 l. nec aliquem  
denar' inde forma qua idem B. superius ver-  
sus eum narrabit. Et de hoc pon' se super  
p'iam. Et p'dict' B. similiter Ideo, &c. Quoad  
part' non debet, &c. Clif. 150. Vid. 153.  
vide Winch. Ent. 176. Non detinet the Five  
Quarters of Wheat, reserved by Lease parol.  
Bro. Met. 181. Vide Bro. Red. 170.

Parat' ad  
solvend' &  
uncore prist'  
& quer' re-  
cepit.

¶ Et p'dict' Def. die quod ipse ad p'dict'  
Festum scd M. & semper postea hucusque pa-  
rat'

## Bar al Covenant & Condition.

101

rat' fuit ad solvend' prefat' Quer' p'dict' 40 s.  
ac ill' parat' eidem quer' solvend' hic in Cur'  
pfert quos quidem 40 s. idem quer' de p'fat'  
Def. hic in Cur' recepit Ideo idem Def. eat  
inde quiet. &c.

ff. Al part' tender al jour & uncore prist,  
al auter part' quod impetrabit Orig' ante  
tempus. Et p' resid non debet p' P'iam. Pl.  
Gen. 256.

ff. Tender of Rent pleaded with *uncore prist*.  
Repl', The Plaintiff accepts the Rent, & *protest'*  
that the Defendant did not tender, *pro placito*  
to have his Costs, for that he requested the  
Defendant to pay, and he refused. *Rejo.* That  
he made no Request, and Issue. 2 Mo. Intr.  
236.

Qd' Def. Assignavit Terminum.

Barr', Per Assignment de Term & accep-  
tance de rent del Assignee. 2 Saun. 298. 3 Inst.  
Cl. 153.

Defendant confesses Part for Rent ; as to the  
Residue, that he assigned over before any Rent  
due. 2 Ven. 228. 3 Inst. Cl. 412.

(29) Upon a Covenant for Non-payment  
of Rent by the Grantee of a Reversion,  
and declares that the Lady P. was seized  
of the Place or Park, and demised to the  
Defendant, who covenanted to pay the  
Rent, and that afterwards for the Consi-  
deration in the Indenture mentioned, which  
H 3 Profert

## Bar al Covenant & Condition.

*profert in Cur'*; but it is not entered in *hac verba*; the Lessor granted the Reversion to the Plaintiff in Fee, to which the Defendant attorned; and for Rent Arrear the Action is brought in the County where the Land lies, as it ought.

Part II. **E**T p<sup>re</sup>dict L. P. per W. P. Att<sup>us</sup> suum ve<sup>n</sup>it & Defend<sup>it</sup> vim & injur<sup>is</sup> quando, &c. Et dic<sup>it</sup> quod p<sup>re</sup>dict J. D. & F. D. (Action<sup>is</sup> non) quia dic<sup>it</sup> quod ante diem impetrat<sup>us</sup> h<sup>ab</sup>is Original<sup>is</sup> ipsorum A. & R. scilicet octavo die Febr<sup>is</sup> Anno Regni dicti Domini Regis nunc 33 apud W. p<sup>re</sup>dict in Cond<sup>itione</sup> p<sup>re</sup>dict idem L. assignavit tot<sup>um</sup> jus statum titulum interesse & Termin<sup>um</sup> suum annorum de & in tenement<sup>is</sup> p<sup>re</sup>dict cum pertin<sup>ent</sup>is adiunct<sup>is</sup> veniunt<sup>ur</sup> & in<sup>ter</sup>pirat<sup>ur</sup> cuidam D. P. Virtute cuius idem D. postea scilicet die & anno p<sup>re</sup>dict in Tenementa p<sup>re</sup>dict cum pertin<sup>ent</sup>is intravit & fuit & adhuc est inde possessionat<sup>us</sup>. Unde p<sup>re</sup>dicto t<sup>er</sup>mo Assignacionis ill<sup>ius</sup> nullus Redditus aretro fuit & insolut<sup>us</sup>. Et hoc, &c. Unde, &c. Quer<sup>itur</sup> Demur<sup>us</sup>. Vide 3 Lev. 229. 232. &c.

Here it is to be noted, That the Defendant pleaded no Acceptance of Rent by the Plaintiff of the Assignee, nor Notice of the Assignment. And it was the Opinion of the Court, That the Action did well lie against the Lessee of the Term, by the Grantee of the Reversion, being an express Covenant after the Assignment, although Notice and Acceptance of Rent had been pleaded. 1 Cro. Batchelor versus Gage, Keigley versus Buckley in B. R. and Thurs-  
by



by and Hall versus Planit. i Siderf. But yet the Judgment was stayed for a Fault in the Declaration, viz. Because the Plaintiff did not mention to whose Use was the Grant of the Reversion, nor any Consideration, but the Consideration in the Indenture, and it does not appear what that was. *Vide postea* Precedent (31).

(30) Qd' sursumreddidit Statum, &c.

ff. **A**ction non quia dic' quod ipse ante tempus quo aliquid de Firma p'ed solvi debuit videt' ante Fest' P. Ann, &c. apud C. sursumreddidit p'efat C. totum Statum & Terminum que huc in Camera p'edict', ad quam sursumreddi'con p'ed C. ibm se agreavit. Et hoc, &c. Unde, &c.

Et p'ed T. (p'cludi non) quia dic' quod p'ed W. non sursumreddidit eidem C. totum Statum & Termin' que ipse huc in Camera p'edict' put idem W. superius allegavit. Et hoc p'et', &c.

Aliter.

ff. Action non quia dic' quod p'ed W. in vita sua post p'edict' diem, &c. & ante p'ed Festum sed P. tunc p'ox' sequen' apud R. in Com' C. sursumreddidit p'efat R. in vita sua, totum Statum suu' que habuit Vir- tute Dimission' p'ed in Manerio p'ed cum pertinen'. Ad quam quidem sursumreddi'con p'ed R. in vita sua tunc ibm agreavit. Et hoc, &c. Unde, &c.

H 4

Repl

## Bar al Covenant &amp; Condition.

Repl' (Preclud non) quia dic' quod p'res  
 W. in vita sua non sursumreddidit p'fat'  
 R. Statum suum put p'res W. L. & J.  
 superius allegaver'. Et hoc pet' quod inquis  
 rat' per p'riam Et p'res J. silit' Ideo, &c.  
 Simile ante Festum, Et similis Repl'. Pl.  
 Gen. 254.

(31) That he had surrendered before the  
 Grant of the Reversion, and the Lessor had  
 accepted.

**E**T modo, &c. & Action non, quia dic'  
 quod ipse idem A. P. post confectionem  
 Dimissionem p'res eidem A. p' p'res Comitem  
 in forma p'res fact' & ante concessionem Rever-  
 sionis p'res eidem W. & L. scilicet octavo  
 die Martii Anno Regni Dni Regis nunc  
 15 idem A. apud L. p'res in Paroch' &  
 Mars p'dict' sursumreddidit eidem Comiti  
 Terminum Annorum ipsius A. de & in Tene-  
 mentis p'res cum p'tin' sibi in forma p'res  
 dimiss' adunc ventur' & inerpirat' ac totum  
 Statum jus titulum & interesse suum de &  
 in eisdem Quam quidem sursumreddicon'  
 idem Comes adunc & ibm acceptabit. Et  
 hoc parat' est verificare Unde pet' iudic' &  
 (Action', &c.)

Repl' (Precludi non) Quia dic' quod p'res  
 A. sursumreddidit eidem Comiti p'res Ter-  
 minum Annorum ipsius A. de & in Tementis p'res  
 cum p'ertin' sibi in forma p'res dimiss' seu  
 Statum jus titulum sive interesse suum de &  
 in eisdem modo & forma put idem A. superius  
 inde

inde p̄litando allegabit Et hoc pet' quod in-  
quiratur p̄ P̄nam Et p̄ed A. inde similiter  
Ideo veni, &c. Thursby vers' Plant. Vide i  
Saun. 235, &c.

This Action was upon a Covenant for Non-  
payment of Rent brought in *London*, by the  
Grantees of the Reversion for the Life of the  
Earl, to which Grant the Defendant at *L.*  
*pred' attorn' &c.* To which Action the  
Defendant pleads in *Bar* a Surrender as a-  
bove: And the Plaintiff Replies as before;  
and upon a Trial, it was found for the Plain-  
tiff, and Damages assessed, and afterwards it  
was moved in Arrest of Judgment: And one  
Exception was, That the Plaintiffs being As-  
signees of the Reversion, it is a local Action,  
and therefore here mislaid; for it ought to  
have been in the County of *Lincoln*, where  
the Land lies, and not in *London*, where  
the Indenture of Demise and Grant of the  
Reversion and Attornment are supposed to be  
made, &c. which was not denied by the o-  
ther Side, if it had not been an Action of  
Debt for Rent. But that this Action of Co-  
venant by an Assignee, lies not at the Com-  
mon Law, as appears by the Preamble of the  
Statute, 23 *Hen. 8. c. 34.* but is given by the  
said Statute which had transferred the Privi-  
ty of the Contract of the Lessor to the As-  
signee of the Reversion by the Words of  
the Act; which say, That the Assignee shall  
have such like and the same Advantage, &c.  
by Action only, for not performing Covenants,  
as the Lessor, &c. And so the Privity is trans-  
ferred by the said Act, as upon an Assignment  
by



by Commissioners of Bankrupt, by which the Action is well brought in *London*. Against which it was said on the Defendant's Side, That at Common Law an Action of Covenant lies for an Assignee of the Land, for a Thing to be done upon the same Lands, as 5 Co. 17, 18. *Spencer's Case*, and *Cro. Car.* 122. and that the Statute did not transfer collateral Covenants as to pay Money, but such as concerned the Land demised, as to repair Houses, and to mend Fences, &c. as by *Co. Litt.* 215. *a. & b.* And that this is not like an Assignment by Commissioners of Bankrupts. But upon Consideration the Court resolved, That the Action here was well brought in *London*, and held that the Statute transferred the Privity of the Covenant, and that this Action of Covenant was not like an Action of Debt for Rent reserved; for if the Lessee assign over his Term, and the Lessor accept the Assignee as his Tenant, then the Lessor may not have an Action of Debt for Rent against the first Lessee, by reason of his own Acceptance, which had extinguished the Privity of the Contract; as in *Walker's Case*, 3 Co. 24. *Cro.* 11. *Jac. Marsh* versus *Brace*. But yet in this Case the Lessor after his own Acceptance, may maintain an Action of Covenant, as adjudged in *Batchelor* and *Gages's Case*, *Cro.* 6. *Car.* 188. And the Court relied much upon a Case, *Brett* and *Cumberland*, *Cro.* 16. *Jac.* 521, &c. which proved that by the Statute the privity of the Contract is transferred; wherefore it was adjudged for the

the Plaintiff: Thereupon the Defendant afterwards brought Error in the *Exchequer*, and the Justices and Barons seemed at first to be of divers Opinions; so the Countess of *Lincoln* being concerned in the Rent, compounded with the Defendant *Plant*, and allowed him Fifty Pounds out of the Money recovered, and other Rent due, and so it was not determined in the *Exchequer*. *Vide antea* Precedent (12, & 29.) *Post*. No. 32.

(32) Qd' nihil Tenementorum transivit in Possession' Defend' per Scriptum Dimissionis.

II. **E**T præ J. S. per J. H. Attozid suum ven, &c. Et dic' (Action non) quia dic' quod nihil Tenement' præ cum pertin in Possession' ipsius A. & præ J. S. p' Script' præ unquam transivit. Et hoc, &c. Unde, &c.

(Precludi non) Quia dic' quod Tenementa præ cum pertin in Possession' præ A. & J. S. per Script' præ transfer'. Et hoc per' quod inquirat' p' P'iam. Et predictus Defend' filit' Ideo, &c.

To a Declaration in Covenant for Non-payment of Money, according to certain Articles of Agreement. The Defendant pleads in Bar, that the Plaintiff had accepted a certain Sum in Satisfaction, Thus, *viz.*

**Q**uando, &c. Et dicit quod p̄d̄ Edwardus accōn' suam p̄d̄ inde vers' eum here non debet quia dicit quod post consecutiō Articuli p̄d̄ necnon post p̄d̄ octavū diem Aprilis Anno millesimo Septingentesimo decimo nono sup̄d̄ scit' secundo die Julii Anno Regni Dñi Reg' nunc quinto apud W. p̄d̄ talis (hec) habebatur concordia inter ipsos R. B. & p̄fāt Edward' scit' Quod idem R. B. tunc immediate solveret p̄fāt Edwardo centū & septem libras & quod ipse idem R. B. quidam M. B. p̄ scriptū suū obligatiōis devenirent conjunctim & divisim teni' & obligat' p̄fāt Edwardo in quadringentis libris cum condicione eidem scripto obligatiōis subscript' p̄ vera solutione ducentar' librar' cum legali interesse inde eidem Edwardo super vicesimum nonum diem Septembr' tunc p̄or' sequen' in plenam satisfaciōem & exoneratiōem separāt' fractiōem conventionis p̄d̄ p̄ narratiōem p̄d̄ superius fieri suppōit' Et idem R. B. ulterius dicit quod ipse p̄d̄ R. B. immediate post concordiam & Agreementū p̄d̄ scit' p̄d̄ secundo die Julii Anno quinti sup̄dicto apud W. p̄d̄ solvebat p̄d̄ Edwardo p̄dict' centum & septem Libr' idemq̄

I

R. B.



R. W. & prefat D. R. adtunc & item per scriptum suum obligatoriu debuerunt conjunctim & divisim tene' & obligat' eidem Edwardo in p'dict quadringentis libris cum condicione eidem subscript p vera solucone p'dict ducentar' librar' cum legali Interesse inde super vicesimum nonum diem Septembr' tunc p'or' sequen' que quidem Centum & septem lib' unacum Scripto obligatorio p'dict eidem Edwardo adtunc & item deliberat' fuer' & isdem Edwardus eundem scriptum adtunc & item recepit fuit & acceptabit in plenam Satisfactionem & Exonerationem separat' fraction' Conventio' p'dict juxta formam Concord' & Agreementi p'dict Et hoc parat' est verificare unde petit Judiciu si p'dict Edwardus Action' suam p'dict inde vers' eum here debeat, &c. See *Clift's Entries*, p. 217.

(33) Condition to perform Articles: The Defendant pleads Conditions performed, Part in the *Negative*, and Part in the *Affirmative*: The Plaintiff assigns Breach for not paying Money into the Post-Office, &c.

¶ **E** modo ad hunc diem (&c.) Et pet' auditum Scripti Obl' p'dict & ei legit', &c. pet' etiam auditum Condition' ejusdem Script' Et ei legit' in hec verba. ¶ The Condition, (&c.) Pet' etiam auditum Instruction' in Condition' p'dict mencionat'

Et

Et ei sicut leguntur in hec verba. ff. Instructions for the several Deputy Post-Masters, (&c.) Quibus lectis & auditis idem Wens. dicit quod predictus W. Dña A. (Adion non) quia dicit quod T. J. in Conditione predicta mentionat a te confectio Scripti. Obi predicta hucusque bene vere fideliter & diligenter executi sunt & performabit omnia & singula Officia ad Officium Deputati. Mri Cursor Anglice Post-Master Stadii predicti spectandi & fideliter iuste & exacte observabit performabit implebit & custodivit omnes & singulas Instructiones Regulas Ordines solutiones & directi ones mentionat contenti inclusi. Specificat in Instructionibus predicta iuxta veram intentionem & propositum earundem instructionum. Idemque Wens. ulterius dicit quod predictus T. J. a te supradicto non recepit aliquas literas sive Falces Anglice Pacquets, alicui Paute sive Militi privato directi vel alicui tali non habentes planas distinctas & certas directiones vel aliquas tales quales mitti directi fuer ab Officio Mri Cursor in Londino ad alia loca nisi ipse idem T. prius soluti fuisset per eisdem & sic onerabit seipsum in Compo suo cum eisdem ut soluti. Quodque idem T. absque speciali ordine non aperuit nec aperiri permisit aliquam Bagam Literarum que per stadium suum venit Excepti tali Baga que ad ipsum missa fuit cum Literis delibandi sive dispergendi ad stadium predictum vel in partibus sive locis vie Anglice Road, Mri Cursor adjacenti, Excepti etiam Baga privata per dispositione Literarum super viam Anglice Road, accepti per Equitatorum cum eisdem Idemque W. ulterius



us die quod p̄dict Dorn A. sive Deputat' sui in general Officio M̄ri Cursor in Londino nullas al ordines Regulas directiones sive Instructiones deder' sive miser p̄dict T. J. sive Deputat' suis signat' p̄ p̄dict Dorn vel ejus Deputat' in dicto General Officio M̄ri Cursor de & concernend Negociation Officii Deputat' M̄ri Cursor dicti Stadii Proxie. Et hoc, &c. Unde, &c.

Et p̄dict Dorn A. sic (p̄cludi non) quia p̄testando quod p̄dict T. J. in conditione p̄dict mentionat' a teo consecron Script' Obl p̄dict hucusque non bene vere fidelit' & diligend execut' fuit & p̄formabit oia & singula Officia ad Officium Deputat' M̄ri Cursor Anglice Post-Master Stadii p̄dict spectand & fidelit' juxta & exacte observabit p̄formabit p̄implebit & custodivit omnes & singulas instructiones Regulas Ordines solutiones & directiones mentionat' content' inclus. & specificat' in instructionibus juxta veram intentionem & p̄positum earundem instructionum p̄ placito p̄dict H. Dorn A. die quod ultimo die Sept' Anno Regni Dorn Car Secundi nunc Regis Angl &c. 22 usque quod tempus p̄dict T. continuabit Deputat' M̄ri Cursor Anglice Post-Master Stadii p̄dict secund cons p̄dict apud L. p̄dict, viz. in Paroch Sancti A. in Warda de L. p̄dict T. J. recepisset p̄ portatione Literarum & Farcinar Anglice Pacquets, que ante tunc fuer' dispersa & delibat' p̄ eund T. & ejus appunctionem secund ratam & taxationem super eadem imposuit summam 184 l. 12 s. legalis monete Angl Nos p̄dict T. J. super p̄dict ultimum



## Bar al Covenant &amp; Condition.

ultimū diem Sept<sup>r</sup> Anno 22 supradicto vel  
hucusque non causavit p<sup>r</sup>dict 184 l. 12 s. sol<sup>r</sup>  
vi in Officium Anglice Post-Office, in Civit<sup>r</sup>  
L. p<sup>r</sup>dict ad usum p<sup>r</sup>dict H. Dom<sup>r</sup> A. Pun-  
tii Generalis p<sup>r</sup> bonas & allocabil<sup>r</sup> bill Ex-  
cambii p<sup>r</sup> eisdem solubil<sup>r</sup> sup<sup>r</sup> vis<sup>r</sup> miss<sup>r</sup> ad  
dici<sup>r</sup> officium scit<sup>r</sup> apud L. p<sup>r</sup>dict in paroch<sup>r</sup>  
& Warda p<sup>r</sup>dict vel aliter. Et hoc, &c. Un-  
de per<sup>r</sup> judic<sup>r</sup> & debm, &c. unacum dampnis,  
&c. Def. moratur in Lege. Et quer<sup>r</sup> jung<sup>r</sup>  
in morac<sup>r</sup>.

It is to be observed, that the Condition of this Bond (for 200 l.) sets forth, That whereas the Earl of *Arlington* had deputed the Defendant Deputy Post-Master of the Stage of *Oxon*, from the 24th Day of *June* next coming for the Term of Six Months following; Now if the said T. J. his Deputies, Servants and Assigns do and shall, for and during all the Time that he the said T. J. shall continue Deputy Post-Master of the said Stage, well, truly, faithfully and diligently, do, execute and perform, (&c.) After Oyer whereof the Defendant pleads as above, and the Plaintiff replies as before; To which Replication the Defendant demurred. And the chief Objection was, that it appeared that the Defendant intended to be obliged for *Jenkyns* only for Six Months; but the Plaintiff would have him bound for *Jenkyns's* Life, by these Words, viz. (*That Jenkyns, all the Time that he shall continue Deputy Post-Master, shall observe and perform, &c.*) which is unreasonable

reasonable to be supposed: And therefore the Defendant's Counsel held, That the Breach ought to have been assigned for Non-payment of the Money received within the said Six Months, and it not being so assigned, he concluded the Replication ill and insufficient. And upon hearing the Plaintiff's Argument to make the Words indefinite, the Chief Justice *Hale*, was of Opinion, That the Condition referred only to the Recital, by which the Defendant was bound only for Six Months and no more; and the Court was of the same Opinion, and Judge *Twisden* cited a Case between *Horton* and *Day*, in *B. R. Mich. 22. Car. 1. Rot. 468. vel. 408.* to the like Purpose: Whereupon the Court would have given Judgment for the Defendant, but then the Plaintiff's Counsel moved, that he would assign a Breach within the Six Months. Whereupon Mr. *Saunders* for the Defendant offered, That if there was any Thing due within the Six Months, his Client would pay it without Suit. And the Chief Justice said, That it was not Reason to let the Plaintiff take Advantage of the Penalty of the Bond for a small Sum, and therefore he would not suffer the Plaintiff to discontinue, but adjourned the Cause to the next Term; But the Opinion of the Court was clearly for the Defendant. *Vide 2 Saun. 403. 415.*

*Note*, The Reporter adds, That he was informed the Plaintiff had made a new Deposition to the said *Jenkyns*, and had taken new Security, but because the new Security proved insolvent, he brought this Action against the Defendant upon the old Security.

(Part IV.)

I

(34) Debts

(34) Debt on Covenants to pay 5 *l.* towards Education of the Defendant's Daughter for Five Years. Defendant *protestando*, she was not then his Daughter, *pro placito*, that the Five Years are not expired, &c.

**E** p<sup>r</sup>dict Jo. p<sup>r</sup> M. Attorn<sup>r</sup> suu<sup>m</sup> vend<sup>r</sup> & defend<sup>r</sup> vim & injur<sup>r</sup> quando, &c. Et dic<sup>r</sup> quod p<sup>r</sup>dict T. (Action<sup>m</sup> non) quia p<sup>r</sup>estando quod p<sup>r</sup>dict Eliz. in villa p<sup>r</sup>dict noiat<sup>r</sup> non fuit filia p<sup>r</sup>dict J. sed sigilla<sup>m</sup>onis & de libera<sup>m</sup>onis ville ill<sup>r</sup> p<sup>r</sup> placito idem J. dic<sup>r</sup> quod Terminus quinque Anno<sup>r</sup> in villa p<sup>r</sup>dict men<sup>r</sup>onat<sup>r</sup> adhuc nondum expirat<sup>r</sup> existit. Et hoc parat<sup>r</sup> est verificare, Unde pet<sup>r</sup> judic<sup>r</sup> a p<sup>r</sup>dict T. M. Action<sup>m</sup> suam p<sup>r</sup>dict inde vers<sup>r</sup> eum here debeat, &c.

Quer<sup>r</sup> mo<sup>r</sup>at<sup>r</sup> in Lege. Et Def. jung<sup>r</sup> in mo<sup>r</sup>at<sup>r</sup>.

Upon this Demurrer it was resolved, That the Protestation (that *Elizabeth* was not his Daughter) was idle. But when it was argued for the Defendant, (to which the Court upon the first and second Argument inclined) That no Action lies until all the Days are passed. *Co. Lit.* 47. b. 292. c. *F. N. B.* 131. a. It was also said for the Plaintiff, That this is not like Bills for Debt, but was a Covenant to pay at several Days, by which Covenant would lie upon Breach at any Day, as upon a Promise



mise to pay at several Days, an Action may be for Non-payment at any Day. *1 Cro. Pick and Ambler's Case*, and as are several other Books and constant Experience; and in every Case where a Covenant is to pay a certain Sum, the Party may have Debt or Covenant for the Money: And here the Five Pounds a Year is for the Maintenance of the Daughter; And if that should not be paid till the End of Five Years, how shall the Daughter be maintained in the mean while? And the Case depended until *Hillary 5 and 6*, and then Judgment was given for the Plaintiff by the whole Court. *Vide Hard. Rep. 178. Nowel's Case*, and see *Lev. Ent. 51. and 3 Lev. Rep. 383. Marsh. versus Freeman*.

(35) Against an Heir upon a Covenant to stand seized to Uses, and Four hundred Pounds Jointure.

**N.** **E** p̄dict J. P. p̄ R. G. Attorn̄ suū Bar per Ri-  
ven̄ & defend̄ vim & injur̄ quando, ens per Di-  
ec. Et dic̄ quod p̄dict G. G. Actionē suam sc̄nt.  
p̄dict H̄us eum Here non debet quia dic̄ quod  
ipse non h̄et aliqua terras libe Tenta p̄ de-  
scensum hereditat' de p̄fat J. P. patre suo in  
feodo simplici nec h̄uit die impetracōis h̄is  
Original' p̄dict G. G. nec unquam po-  
tea Et hoc parat' est verificare, Unde per  
judic̄ si p̄dict G. G. Actionē suam p̄dict H̄-  
sus eum Here debeat, &c.

Repl'.

That the now Plaintiff and M. T. after the Death of T. T. the Father of the Defendant 12 July. 29 Car. 2. prosecuted an Original Writ, &c. against the Defendant, return' *tres Mich.* That the Plaintiffs in the Writ appeared, and a Return of *Nil habet*, &c. A *Capias* awarded returnable in *Octab. Hill. Vic. non misit breve, alias Capias* awarded returnable *Quinden pas. Vic. non misit breve, alias Capias ret. Cro. Trin. &c.* And so it was continued in *Octab. St. Hillarii* 31 Car. 2. At which Return both Parties appear, and declare upon the Original, as before in this Declaration *mutatis mutandis*, and assigns a Breach, That the Premises were not of the Yearly Value of 400 l. but only of the Value of 165 l. and no more. *Ad dampnum 2000 l. Et inde produc. sectam, &c.* Upon that Declaration the Plaintiffs had Judgment by *Nihil dicit*, and a Writ of Inquiry of Damages, returnable *Quinden. Pas. Vic. non misit breve*; A second Writ awarded, & *Vic. non misit breve*; A third Writ awarded, & *Vic. non misit breve*; And so a fourth Writ awarded *Ret. Octab. Hill.* And a fifth Writ awarded *Retorn' Crastino Ascensionis.*

Prout p Record & Process' inde in Poicta Cur' dicti Dom' Regis hic scilicet apud Westm' Poict' residen' constat manifeste Et idem G. G. ulterius dic' quod post ult' continuacionem placiti poict' scilicet post poict' Octab' Scti Villarii ult' menconat' & ante poict' Crast' Ascensio' Dom' tunc pr' sequen' (usque secretis, &c. quem diem placitum illud ult' continuas

at' fuit) scil' 7 die Martii Anno Regni dicti  
 Domi Regis 33. prefat' M. P. p quampluri-  
 mam paupertat' & diversa malefacta p ipsum  
 ppetrat' seipsum elongavit in locis secretis ac  
 eidem G. penitus ignot', & sic elongat' in  
 loco secreto existend' eodem die & Anno uli'  
 mentonat' obiit scilicet apud Chelmsford pdict'  
 p quod pdict' breve Original primo ut pferet  
 pquisit' & prosecut' abatavit & cassum & vacu-  
 um in Lege devenit. De cujus  
 quidem M. morte occasione Pres-  
 miss' pdict' ipse idem G. non  
 fuit notic' donec diu post mor-  
 tem ill' videlicet usq' ult' diem  
 Junii Anno 33. supradicto Quod-  
 que superinde ipse idem G. recenter post no-  
 tic' de mort' pdict' M. hic scilicet 14 die  
 Julii Anno 33 supradicto perquisivit & proles-  
 cut' fuit extra pdict' Cur' Cant' dicti Domi  
 Regis apud Westm' pdict' tunc tunc existend'  
 pdict' breve originale super quo ipse idem G.  
 modo narrabit Glus pstat J. P. ut fil' & heres  
 pstat T. P. de & super fraction' Condencon  
 pdict' in Indentur pdict' hic in Cur' plat' su-  
 perius spec' tunc Wic Com G. pdict' rezo-  
 nabile coram Justic' ipsius Domi Regis hic sci-  
 licet apud Westm' pdict' a die Scti Michis  
 in tres sept' tunc pr' sequend' offens' in forma  
 pdict', &c. Et quod pdict' tunc Wic heret tunc  
 Summonitores & breve illud. Ad quem diem  
 hic ven' pdict' G. per Actozm suum Et ob-  
 tulit se quarto die versus pstat J. de plas-  
 cito pdict', &c. That the Sheriff returned Nil  
 huius, and a Capias awarded Rei' Drab  
 Will'. Et breve illud deliberat' fuit de Re-  
 cordo

That the Plaintiff had  
 no Notice of the Death of  
 M. till 30 Junii, 33 Cars  
 2. whereupon he purcha-  
 sed this new Writ.



The Plain-  
tiff says, That  
the Day of  
purchasing  
the first Writ  
the Defen-  
dant had Af-  
sets by Di-  
scent.

Averment.

corro, &c. Ad quem diem hic vend p̄dict G. p  
Attorn suum Et obtulit se quarto die versus  
p̄lat' J. de p̄lito p̄dict, &c. Et Uic nichil ins  
de fec' nec breve inde misit (and so it is con-  
tinued again to Octab S̄ci Willar.) Ad quem  
diem hic scilicet apud Westm̄ p̄dict vend tam  
p̄dict G. p J. P. Attorn suum quam p̄dict  
J. P. p p̄dict R. G. Att' suum p̄dict, super  
quo ipse p̄dict G. narrabit versus ipsum J.  
P. de & sup p̄dict brevi Original' ult' spec'  
de p̄dict placito Convençon fract' modo & for-  
ma supradict Et p̄dict G. G. ulterius die qd  
p̄dict die p̄quisitionis & p̄secutionis p̄dict p̄-  
mi brevis Original' p̄ ipsum S. & p̄lat' M.  
P. in vita ipsius M. ut p̄fertur Glus p̄lat'  
J. P. habit' scilicet p̄dict 12 die Julii Anno  
regni dicti Dñi Regis nunc 29 supradicto  
ipse p̄dict J. P. habuit diversas terr' & centia  
p̄ descensum hereditat' de p̄lat' G. P. patre  
suo in feodo simplici Unde eidem G. de  
dampnis suis p̄dict p̄ ipsum supius exact' las-  
tisfecisse potuit vide't apud Chelmsford p̄dict  
Et hoc idem G. parat' est verificare Unde  
pet' judicium & dampna p̄dict occōne p̄miss'  
p̄dict sibi adjudicari, &c. Cum hoc quod idem  
G. verificare vult quod p̄dict causa Accōnis  
quoad fracōnem Convençon p̄dict supius spec'  
& allegat' in p̄dict brevi original' & Parr' p̄  
p̄dict G. & M. P. in vita ipsius M. sic ut  
p̄fertur primo p̄quisit' & p̄secut' Et p̄dict'  
causa Accōnis fracōnem Convençon ut superius  
est liti' spec' & assign' in p̄dict brevi Original'  
& Parr' p̄ ipsum G. modo liti' ult' ut  
p̄fertur p̄quisit' & p̄secut' sunt una & eadem  
causa Accōnis quoad fracōnem ejusdem Con-  
vençon

vention & non alia neque diversa causa Actionis, &c.

Et p<sup>o</sup>dict J. P. dic' quod p<sup>o</sup>dict G. G. ad p<sup>o</sup>dict Crast' Ascension<sup>is</sup> D<sup>ni</sup> usque quem si de-  
em p<sup>o</sup>dictum p<sup>o</sup>dict sup p<sup>o</sup>dict p<sup>o</sup>dictum h<sup>ic</sup> op<sup>o</sup>ti-  
ginal' ult' continuat' fuit ut p<sup>o</sup>fertur in ea-  
dem Cur' hic non ven<sup>it</sup> nec p<sup>o</sup>dictum illud ul-  
terius continuat' fuit sed loquela illa tunc re-  
mansit sine die Quodq<sup>ue</sup> p<sup>o</sup>dict Crast' Ascens-  
ion<sup>is</sup> D<sup>ni</sup> fuit 13 die Marti Anno regni die-  
ti D<sup>ni</sup> Regis nunc 39 supradicto Quodq<sup>ue</sup>  
p<sup>o</sup>dict h<sup>ic</sup>ve unde p<sup>o</sup>dict G. sup<sup>er</sup>ius modo nar-  
ravit p<sup>o</sup>quisit' & p<sup>o</sup>secut' fuit p<sup>o</sup> eund<sup>em</sup> G. extra  
p<sup>o</sup>dict Cur' Cant' p<sup>o</sup>dict 14 die Julii Anno 33  
supradicto & non antea Unde ex quo p<sup>o</sup>dict  
ult' h<sup>ic</sup>ve non fuit recent' p<sup>o</sup>secut' post p<sup>o</sup>dict  
Cr<sup>is</sup>tum Ascension<sup>is</sup> D<sup>ni</sup> idem J. per' judic'.  
Et quod p<sup>o</sup>dict G. ab Action<sup>e</sup> sua habend<sup>um</sup> p<sup>o</sup>-  
cludatur, &c. Demurrer and Joinder in Demur-  
rer. 1 Lut. 287, 296.

Rejoinder;  
That the  
first Writ  
was discon-  
tinued.

Upon the Argument of the Demurrer, it was alledged by the Defendant's Counsel, First, That there was a material Variance between the First and Second Declaration, the Damages in the First being laid only to 1000 l. and those in the Second to 2000 l. which ought not to be; for the Second Writ ought to be in Continuance of the First, as it is in *Spencer's Case*.

Secondly, That the First Writ abated by the Plaintiff's Default; for *M. Y.* died 7 Mar-  
tii, 33 Car. 2. and the last Continuance, which was upon the first Original, was to Octab. Hill.  
31 Car. 2, So that the first Original was dis-



continued for a long Time in the Life of *M. T.* and then no Writ *de Journeys Account* lies. And although the Plaintiff alledged that *M.* died after the last Continuance, that will not avail, for a precise Time ought to be alledged; so that it may appear to the Court, that his Death was between the Day from which, and the Day to which the Action was continued, and so are all the Precedents.

Thirdly, That the Second Writ was not brought in due Time; for there were more than four Months after the Death of *M. T.* before the Purchase of the Second Original: For he died 7 *Martii*, 33 *Car.* 2. and the Second Writ was 14 *Julii*, 33 *Car.* 2. And that the Plaintiff had not Notice of his Elongment and Death till the last Day of *June*, 33 *Car.* 2. was not material in the Case; for no Body was obliged to give him Notice, and therefore himself ought to have taken Notice. And then it appears by the Record, that the Plaintiff had not freshly pursued his Second Original, as all the Pleadings are in Case of a Writ purchased by *Journeys Accounts*. *Vide* 1 *Lut.* 296, 297. Where the Reporter says, That there was no Judgment given in the Case, nor other Proceedings; and the Reason (as he was informed) was, That there was a Difference of Opinion amongst the Judges, whether the Second Action was brought within the due Time or not?

*Note*, That in *Cro. Car.* 264. *Sir Tho. Finch's* Case, a first Action was brought up-



on an *Assumpsit* in *Kent*, and a second in *Suffolk*; the First for 500 *l.* the Second for 600 *l.* and Judgment given in *C. B.* was affirmed in *B. R.* And as to the Damages the Case of *Boyl* and *Scarborough*, *Style* 440. is accordingly.

Also it is said in *Sir Tho. Finch's Case* where a new Original was purchased after the Reversal of an Outlawry, That the new Original was brought within a Year after the Reversal of the Outlawry, and yet adjudged good. But in *Winch*, 82, it is said in Effect by the Court in the same Case, That it ought to be brought immediately after the Reversal of the Outlawry.

(36) ff. **D** E B T by an Administrator of *W. W.* for 20 *l.* Narr' upon a Bond, and Administration granted to the Plaintiff by the Archbishop of *Canterbury*. Upon Oyer of the Condition, it was to perform Articles between the Def. and the Intestate. By the said Articles, reciting, That the Intestate in the Right of his Wife was intitled to the Third Part of the Profits, &c. and an Agreement, That the Intestate should take Yearly during his Wife's Life 10 *l.* in Satisfaction of her Third Part, &c. The Defendant covenanted with the Intestate to pay 10 *l.* by equal half-yearly Payments, the first Payment to be upon the 29th of *September* then next following; also the Intestate covenanted that he would accept the 10 *l.* in Satisfacti-

Satisfaction of his Wife's Dower, prout per  
*Articulos prædict' apparet.*

The Def.  
 pleads Per-  
 formance of  
 Covenants  
 generally.

Et idem M. dic' quod ipse idem M. a  
 tempore confectio<sup>n</sup> Articulorum prædict' huc-  
 usq; bene & fidelit' observavit pformavit pimplevit  
 & custodivit omnia & singula Convens-  
 tion<sup>u</sup> Clausulas Articulos & Agreement' que-  
 cunque in Articulis prædict' mentionat' ex par-  
 te sua observand' pformand' pimplend' & custos-  
 diend' secundum formam & effectum Articulo-  
 rum prædict' Et hoc (&c.) Unde (&c.)

(Precludi non) quia ptest' quod prædict' M.  
 tempore confectio<sup>n</sup> Articulorum prædict' hucusque  
 non observavit pformavit pimplevit seu custod  
 aliquas Conventions Clausulas seu Agreeas-  
 ment' quecunque in Articulis ill' mentionat'  
 ex parte prædict' M. observand' pformand' pim-  
 plend' & custodiend' secundum formam & ef-  
 fectum Articulorum ill' put idem M. supius  
 allegavit p placito idem W. R. dic' quod  
 prædict' R. ux' prædict' W. W. post confectio<sup>n</sup>  
 Articulorum prædict' vixit & continuavit in ples-  
 na vita usq; ad & post Festum Annuntiaçio<sup>n</sup>  
 beæ Mariæ Virginis Anno regni Dñi Jac  
 2. nunc Regis Angl' &c. primo scilicet apud  
 A. prædict' Et idem W. R. ulterius in facto  
 dicit quod quinque libe de prædict' annuat Sum-  
 ma sive solutione reservat' in Articulis prædict'  
 supius mentionat' pro dimid' unius anni ad  
 idem Festum finit' ad idem Festum eidem  
 W. R. post mortem ipsius W. W. retro  
 fuer' & adhuc insolut' existunt videlicet apud  
 A. prædict' contra formam & effectum Artic-  
 ulorum prædict' Et hoc (&c.) Unde per' iudic'  
 (&c.)

Breach,  
 That the  
 Wife was  
 living after  
 the 25th of  
 March, &c.

(ac.) Def. Demurr' & Quer' jung' in morac'.  
1 Lut. 323, & 326.

By the Opinion of the whole Court, the Payment of the 10 *l.* by the Intent of the Articles, was to continue only during the joint Lives of *W. W.* and *K.* his Wife, and therefore Judgment was given for the Defendant.

(37) ff. **D**E B T for 1000 *l.* upon a Bond made 7 *Sept.* 32. *Car.* 2. to the Plaintiff and *R. F.* deceased, conditioned to perform Articles, in which Articles after it is recited, That a Marriage was intended to be had between the Defendant and *A. C.* which *A. C.* was seized of divers Messuages, &c. in *B.* for her Life, Remainder to such Uses as she should declare by Writing, &c. with an Averment, That the Tenements were of a yearly Value between 60 and 80 *l.* It was agreed, that after the Marriage the Defendant should have the Rents, &c. during the joint Lives of him and the said *A.* Excepting, &c. And reciting, That *A.* was possessed of a personal Estate, &c. and that it was agreed the Defendant should have no Power of it, nor of the Rents, but that they should be applied to satisfy the Debts of *A.* and the Residue to be at the free Disposal of *A.* In Consideration of which Premises the Defendant covenanted to pay yearly to the Plaintiff and *F.* 20 *l.* in Trust for the sole Use of *A.* (upon which Covenant the Breach is assigned.)



assigned.) *Prout per Articulos præd' plenius apparet.*

Bar per  
Conditions  
performed.

Et idem J. ulterius dic' quod ipse a tempore confectio[n] Articulozum p[re]dict hucusq[ue] bene & fidelit[er] observavit p[ro]formavit p[er]implevit solvit & custodivit o[mn]ia & singula Conventiones Concession[es] Articulos Solu[ti]o[n]es & Agreementa in p[re]dict Articulis indentat[is] specificat[is] ex parte sua observand[is] p[ro]formand[is] p[er]implend[is] solvend[is] seu custodiend[is] juxta formam & effectum eorundem Articulozum in ea parte Et hoc parat[um] est verificare Unde per' judic' & p[re]dict C. Action[em] suam p[re]dict vers[us] eum habere debeat &c.

Replie'.

Et p[re]dict C. dic' quod ipse per aliqua p[ar]tes legat[ur] ab Actione sua p[re]dict h[ab]ere p[re]cludi non debet quia protestando quod p[re]dict J. non observavit p[ro]formavit p[er]implevit solvit seu custodivit aliqua Conventio[n]es Concession[es] Articulos Solu[ti]o[n]es & Agreementa in p[re]dict Articulis indentat[is] specificat[is] ex parte sua observand[is] p[ro]formand[is] p[er]implend[is] solvend[is] seu custodiend[is] juxta formam & effectum eorundem Articulozum in ea parte prout p[re]dict J. superius allegavit pro p[ar]te idem C. dic' quod post confectio[n] p[re]dict Articulozum scilicet 28 die Sept[embris] Anno regni dicti nup[er] Regis 32 sup[ra] dicto apud C. p[re]dict Matrimonium inter p[re]dict J. & p[re]dict A. habit[um] & solemnizat[um] fuit Et idem C. ulterius in facto dic' quod p[re]dict J. non solvit p[re]dict C. & R. in vita ipsius R. seu eidem C. post mortem p[re]fat[is] R. decem lib[ras] ad Festum Annunciacio[n]is b[ea]te Marie Virg[in]is A. regni dicti nuper Regis 35. seu infra tres menses p[ro]x[imo] post idem Festu[m] quas eis ad idem Festum vel infra tres menses p[ro]x[imo] post idem Festum solville debuit secundu[m] formam

formam & effectum Articulorum prædict Et hoc  
 &c. Unde pet' judic' &c. Cum hoc quod idem  
 C. significare vult quod prædict A. adhuc supstes  
 & in plena vita existit videlicet apud C. prædict.  
*Demurr' & Joinder en Demurrer.* 1 Lut.  
 459, 463.

In this Case there was only one Excep-  
 tion taken by the Defendant's Counsel, viz.  
 That the 20 l. was to be paid only for the  
 first Year after the Marriage. But it was the  
 Opinion of the Court, that the Payment was  
 to continue during the joint Lives of the De-  
 fendant and the said A. by the Intention of  
 the Articles; for by the express Words there-  
 of the Defendant was to have all the Profits  
 of the Lands from the Time of the Marriage  
 during the joint Lives of him and of the said A.  
 except the Rents and Profits, which should ac-  
 crue at the Feast of St. *Michael* next follow-  
 ing. And in Consideration of the Premisses  
 the Defendant covenanted to pay the said  
 20 l. yearly, the first Payment to begin at the  
 Feast of the *Anunciation* next ensuing. Where-  
 by it appears it was the Intent of the Par-  
 ties, that as the Defendant was to have the  
 Profits of the Lands during their joint Lives,  
 so he should pay the 20 l. during their joint Lives,  
 in lieu of the said Profits; for the Wife was  
 to have the Rents and Profits of the Lands till  
*Michaelmas*, but after *Michaelmas* only 20 l.  
*per Annum*. Whereupon Judgment was gi-  
 ven for the Plaintiff. 1 Lut. 463.

(38) Thomas Major, *Administrator of John Wood, not administred by Deborah Wood, Plaintiff, against Daniel Peck and Ursula his Wife, Executrix of Richard Wood.*

ff. **A** Writ of Covenant brought upon an Indenture of Demise, and the Declaration recites an Indenture of Demise made by the Intestate of the Plaintiff, to the Testator of the Defendant, and one *Ben. Wood*, 21 Dec. 34 Car. 2. of a House in *Pater-noster-Row*, except the Use of the Messuage, &c. for the first two Years of the Term, to hold for 21 Years from *Christmas* then next, at 70 *l.* Rent *per Annum*, at the Four usual Feasts. And the Lessees covenant jointly and severally to pay the Rent. That the Lessor, 20 Dec. 35 Car. 2 made his Will, and the said *Deborah* his Executrix; and that 10 March 1684. he died possessed of the Reversion, &c. and that *Deborah* proved the Will 21 Martii, 1684. And that the Lessee *Richard Wood*, 15 Jan. made his Will, and the Defendant *Elizabeth* his Executrix, and died; then a Probate of the Will and Death of *Deborah* Intestate, and *Administration' de bonis non*, &c. granted to the Plaintiff during the Minority of *Rebecca Wood*. Then sets forth the Marriage of the Defendant *Ursula* and *Thomas Peck*, and 87 *l.* 10s. Rent arrear for One Year and a Quarter, produces Letters of Administration, with an Averment,



ment, that *Rebecca Wood* is under the Age of 21 Years. — Bar, That after the last Continuance the said *Rebecca Wood* had attained her Age of 21 Years, viz.

Et p̄dict D. & U. p̄ J. F. Attorid suū  
 veni & defendi vim & injur' quando, &c. Et  
 pet' licenc' inde interloquendi hic usque a die  
 S̄ci Michis in tres Sept' Et habent, &c. idem  
 dies dat' est p̄fat' T. hic, &c. Ad quem diem  
 hic veni tam p̄dict T. qua D. & U. ur' es  
 jus p̄ Att' suos p̄dict Et sup hoc p̄dict T. pet'  
 quod p̄dict D. & U. ad Narracōnem suam  
 p̄dict respond' &c. Et p̄dict D. P. & U. ur'  
 esus p̄ J. F. Attorid suū veni & defendi  
 vim & injur' quando, &c. Et dic' quod p̄dict'  
 T. P. Actionē suam p̄dict vers' eos here  
 non debet quia dic' quod post ult' Continu-  
 cōd p̄liti p̄dict' scit post diem Veneris prox'  
 post Cr̄um S̄cē Trin' ult' p̄terit' de quo die  
 p̄litum p̄d ult' continuat' fuit hic hūq; ad hunc  
 diem scit diem Veneris prox' post tres Sept'  
 S̄ci Michis & ante hunc diem scit primo die  
 octobris Anno regni D̄ni & D̄ne Regis &  
 Regine nunc tertio p̄dict' *Rebecca Wood* in  
 Parr' p̄ed nominat' deven' & attingebat An-  
 glie did attain ad plenam etat' suam vigin-  
 ti & unius annorum videt' apud L. p̄ed in  
 Paroch & Ward p̄dict' Et hoc, &c. Un-  
 de, &c. Demurrer inde. Vide 1 Lut. 338,  
 &c.

Imparlance.

This Case was never entred for 'Argu-  
 ment by the Plaintiff, but Serjeant *Lutwyche*  
 being retained to argue for the Defendant,  
 did

did intend to insist, First, That the Plea was good; and Secondly, That the Declaration was ill. And as to the First, he says, That tho' the Action was well commenced, yet when *Rebecca* attained the Age of 21, the Plaintiffs Authority was determined, and by Consequence the Action also; and cites *Ford vers' Glanville*, *Goldsb.* 136. and *Clare vers' Hedges*, 3 *W. & M. B. R.* upon a Demurrer to a *Scire facias*, brought by an Administrator during the Absence of another: The Court held clearly, That such an Administration might be well granted by Law, and might be a great Conveniency; for if the next of Blood be beyond Sea, if such an Administration could not be granted, the Debts of the Intestate could not be collected or recovered: And also that after the Return of the next of Kin, Payment of a Debt to such an Administrator before Notice is good. And also, that although it may be that Actions brought by such an Administrator shall abate by the returning, &c. Yet that Actions against him are not abated, but shall continue against the lawful Administrator. If an Administrator, during the Minority of an Infant Executor, had Judgment, and afterwards the Executors come to full Age, he may have a *Scire fac'* to execute the Judgment, *Rolle, Tit' Executor* 888. *Lit. R. Pl.* 1, 2. *Brownlow.* 83. And so if an Administrator have Judgment, and before Execution the Letters of Administration are revoked, the Defendant shall have an *Audita Quer'* to prevent Execution against him, 2 *Saund.* 48. *Mod. Rep.* 62. So if the Defendant be actually in Execution,

Yelv.

*Yelv.* 125. *Kett's Case*. By which Cases it is proved, That an Administrator cannot proceed in an Action after his Authority is determined.

—And as to the Declaration, That there is a material Variance between it and the Writ; for the Writ is brought by the Plaintiff as an absolute and compleat Administrator; and by the Count it appears that he is only a qualified and limited Administrator, and therefore he ought to be so named in the Writ.

*Brown's Entries* 1 Part 18. *Ashton's Entries* 218. So in an Action against such an Administrator, *Hern.* 301. So if one brings an Action as Administrator, with the Testament annexed. *Vid.* 75. See 1 *Lut.* 342, 343.

(39) ff. **D**E B T against an Administrator upon a Bond for Performance of Covenants. The Defendant by his Bar sets forth the Covenants whereby the Plaintiff was to have 200 Furse Fagots, or Wood Fagots, during the Term; Then the Defendant pleads Covenants performed generally. *Repl'*. That he had not of the Intestate in his Life, or of the Defendant afterwards, 200 Furse Fagots yearly during the said Term, but that 800 Furse Fagots, or 800 Wood Fagots, eidem S. debi' fuer' a predicto A. filio in vita sua & poict S. post poict A. filii mortem pro quatuor annis finit' sup primum diem A. Anno regni Dni Regis nunc tertio & adhuc arrears existunt contra formam & effectum Convention Indentur' preb Et hoc parat' est verificare Unde pet' iudic' & verbum suum preb unacui dampnis suis sibi ad-

(Part IV.) K iudicari,



judicari, &c. Defendant Demurs.——And Judgment in this Case was given for the Defendant, because it was held that the Deed, as to the Fagots, did not amount to a Covenant that the Intestate should provide the Faggots at his proper Costs and Charges, and deliver them to the Plaintiff. But that it was only a Liberty reserved to the Plaintiff to take yearly upon his Lands so many Fagots; and also because it was not shewn by the Plaintiff what Quantity of Fagots he had not received in the Life of the Intestate, and what after his Death; for perhaps the Defendant had several Matters to plead, *viz.* one distinct Matter as to those which the Plaintiff had not received in the Intestate's Life, and another Matter as to those which were not received by the Plaintiff after the Intestate's Death. *Vide 1 Lut. 334, 335.*

(40) Narr<sup>s</sup> upon Articles for 150 *l.* setting forth, That *T. P.* Vicar of *S.* should permit the Defendant to take Duties and Payments, &c. arising to him within the Parish of *S.* as Vicar, to become due at *Michaelmas* next, and should upon Request make a Grant of them, to the Defendant for his Life, and should surrender the Vicaridge, so that the Defendant might present *de novo*: The Defendant covenanted to pay the Plaintiff 150 *l.* in lieu of such Duties and Payments, &c. with an Averment, that *T. P.* had performed all;

all; and Breach, That the Defendant had not paid the said 150<sup>l</sup>.

**E**t pōict R. p. R. Actōm suum Bar<sup>o</sup>, That  
 ven<sup>t</sup> & defend him & insur<sup>o</sup> quando, the said T. S.  
 ec. Et dic<sup>t</sup> quod pōict R. Actiō suam pōict died in the  
 inde vers<sup>u</sup>s eum here non debet quia dic<sup>t</sup> said Year,  
 quod post confectiōm Articulorum in Parr and before  
 pōict R. superius recitat<sup>r</sup> & ante Festū S<sup>c</sup>i Michaelmas;  
 Michis tunc p<sup>r</sup> sequen<sup>t</sup> scilicet ul<sup>t</sup> die Julii &c.  
 anno supradicto p<sup>r</sup>fat<sup>r</sup> T. P. apud S. pōict  
 oblit<sup>r</sup> quod p<sup>r</sup> ejus obitū titū<sup>t</sup> suus ad De-  
 cimas debet<sup>r</sup> p<sup>r</sup>oficua reddit<sup>r</sup> & solutiōes pōict  
 finit<sup>r</sup> fuit p<sup>r</sup> quod idem R. decimas debet<sup>r</sup>  
 p<sup>r</sup>oficua reddit<sup>r</sup> & solutiōes ei p<sup>r</sup> Articulos  
 pōict solub<sup>l</sup> p<sup>r</sup>o uno anno integro secundum  
 formam & effectum Articulorum pōict capere  
 & recipere non voluit & hoc parat<sup>r</sup> est veris-  
 ficare Unde per<sup>r</sup> Judic<sup>e</sup> si pōict R. Actiōm  
 suam pōict inde vers<sup>u</sup>s eum here debeat, &c.  
 Quer<sup>r</sup> Demurr<sup>r</sup>. Vide 1 Lut. 343, &c.

An Exception was taken to this Bar, viz.  
 That the Defendant had pleaded a transitory  
 Thing, viz. the Death of the said T. P. at S.  
 and the Action is brought in London; and  
 that it was a good Exception, the Cases of  
*Collins and Sutton*, 1 Sid. 234. 1 *Saunders*  
 4. *Wright and Ramsden's Case*, and 3 Cro.  
 84. *Cowleigh and Edwards* were cited.

But then another Exception was taken,  
 that the Contract in this Case was Sino-

## Bar al Covenant &amp; Condition.

niacal, by reason of the Covenant to resign, and by Consequence void. But as to that the Plaintiff's Counsel said, That the Covenant is, that *T. P.* by all lawful Means should upon Request resign to the Defendant, which is all one in Effect as if it had been said, That *T. P.* shall resign if it may be done by legal Means; so that it was the Intent of the Parties that the Resignation should not be made, if it might not be made lawfully. But admitting that the Words (by Lawful Means) had been omitted, the Contract had not been Simoniacal; for the Covenant for the Payment of the said 150 *l.* is a distinct and independent Covenant, and for that the Case of *Byrt and Manning, Cro. Car. 425.* was cited; wherein, amongst other Covenants to pay Money and assure Lands upon a Marriage, *M* covenanted that he would procure the said *B* to be presented, &c. to such a Benefice upon the next Avoidance, and thereupon the Breach was assigned; and upon Demurrer it was adjudged for the Plaintiff. And it was said by the Court, That if the said Covenant had been, that in Consideration of the said Marriage the Defendant had covenanted to procure *B.* to be presented, That had been a Simoniacal Contract, and made the Bond void. But the Covenant was not in Consideration of the former Covenants, but a most distinct Covenant, and independent upon the former Covenants; and without a special Verment that it was a Simoniacal Contract it should not be intended to be so; for it might be a Covenant upon good Consideration.



tion. Which Case was direct with the Case in Question, and the Plaintiff had Judgment by the Opinion of the whole Court. For the Simony *vide Litt. Rep.* 117. *Mo.* 564. *Oldbury's Case*, and *Mackabar* and *Siderick's Case*, *Cro. Car.* 337. and 6. *Vide* 1 *Lut.* 345, &c.

(41) Upon a Breach for Rent due, and not making Repairs.

**E** T p<sup>o</sup>dict W. J. p J. B. Attoz<sup>u</sup> suum ven<sup>o</sup> & defend<sup>o</sup> vim & injur<sup>u</sup> quando &c. Et quoad fraction<sup>u</sup> conventio<sup>u</sup> p<sup>o</sup>dict in non solvendo Reddit<sup>u</sup> p<sup>o</sup>dict superius aretro fore supposit<sup>u</sup> idem W. J. dic<sup>o</sup> quod p<sup>o</sup>dict W. B. Action<sup>u</sup> suam p<sup>o</sup>dict<sup>u</sup> inde vers<sup>u</sup> eum here non debet quia protestando quod 31 l. & 10 s. de reddit<sup>u</sup> p<sup>o</sup>dict pro tribus annis finit<sup>u</sup> ad Fest<sup>u</sup> S<sup>o</sup>ci M. Ep<sup>o</sup>d in hyeme Anno regni dictoz<sup>u</sup> D<sup>o</sup>ni Regis & D<sup>o</sup>ne Regine nunc quarto supradicto eidem W. B. ad idem Festum non aretro fuer<sup>u</sup> & insolut<sup>u</sup> pro p<sup>o</sup>lito die quod post p<sup>o</sup>dict Fest<sup>u</sup> S<sup>o</sup>ci M. Ep<sup>o</sup>d in hyeme Anno regni dictoz<sup>u</sup> D<sup>o</sup>ni Regis & D<sup>o</sup>ne Regine nunc quarto supradicto & ante diem impetrac<sup>o</sup> brevis Original<sup>u</sup> ipsius W. B. scilicet 21 die Decembr<sup>u</sup> eodem Anno apud Castrum Ebor<sup>u</sup> p<sup>o</sup>dict<sup>u</sup> idem W. J. sol<sup>u</sup> vit p<sup>o</sup>lar<sup>u</sup> W. B. 5 l. 5 s. in plenam satisfactionem omnis reddit<sup>u</sup> eidem W. B. p ip<sup>u</sup>sum

Bar, as to the Rent, That the Plaintiff had accepted 5 l. 5 s. in full Satisfaction; and as to the Repairs, that he from time to time did repair them in a reasonable and convenient Time, and traverses, that they were unrepaired, &c.

sum *M. I.* tunc debet ac fractionem Conventio-  
 nis predictae in ea parte quas quidem § 1 § 5.  
 predictae *M. B.* adtunc & ibidem recepit & ac-  
 ceptabit in plenam satisfactionem omnis redditus  
 eidem *M. B.* per ipsum *M. I.* tunc debet  
 ac fractionem Conventio-  
 nis predictae in ea parte Et  
 hoc parat est verificare Unde per iudicem si predictae  
*M. B.* Actionem suam predictam inde versus eum  
 habere debeat, &c. Et quoad fractionem Conventio-  
 nis predictam in non reparando & supponendo  
 predictae Vestuagium Horreum Stabulum Holendinum  
 duo alia Edificia Pali Rali Sepes Fossat  
 Ralos Januas Climaces & alia Premissa predictae  
 superius in decalu & irreparat esse supposit  
 Idem *M. I.* dicit quod predictae *M. B.* Actionem  
 suam predictam inde versus eum habere non de-  
 bet quia dicit quod toties quoties eadem vel  
 aliqua pars inde debet in decalu seu repa-  
 rationibus aliquibus indigebant ipse idem *M. I.*  
 postea in tempore conventio-  
 nis de tempore in tempus omnia in eadem bene  
 & sufficienter emendavit & reparavit in om-  
 nibus secundum formam & effectum Conventio-  
 nis predictae absque hoc quod predictae Vestuagium  
 Horreum Stabulum Holendinum duo alia  
 Edificia Pali Rali Sepes Fossat Januae Cli-  
 maces & alia Premissa in nunc predictae superius  
 inde specie vel aliqua pars eorundem fuerit  
 vel fuit irreparata vel in decalu per defectum  
 reparacionem modo & forma per predictam *M. B.*  
 inde superius allegavit Et hoc parat est ve-  
 rificare Unde per iudicem si predictae *M. B.*  
 Actionem suam predictam inde versus eum habere  
 debeat, &c.



Et p̄dict M. B. quoad p̄dict placitum p̄d Repl' Quant  
 M. J. quoad frac̄ōn̄ conven̄ōn̄ p̄dict in al Rent non  
 non solvend̄ reddit' p̄dict' superius placitat' solvit & Issue;  
 dic̄ quod ipse per aliqua in eodem placito and as to the  
 p̄allegat' ab Actione sua p̄dict' inde solus 2. Repairs the  
 undem M. J. habend̄ p̄cludi non debet quia Plainriff  
 dic̄ quod p̄dict M. J. non solvit p̄fat' M. maintains  
 B. p̄dict § l. & § s. modo & forma put i- his Count  
 dem M. J. superius placitando allegabit, and Issue  
 Et hoc pet' quod inquiret' per p̄riam. Et thereon.  
 p̄dict J. similic', &c. Et quoad p̄dict placitum  
 p̄dict M. J. quoad frac̄ōn̄ Conven̄ōn̄ p̄dict  
 in non reparando & suppoztando p̄dict Mes-  
 suag' horreid̄ stabulum molendinum duo al  
 Edificia palos sepes fossat' calos Januas Cli-  
 maces & al' Premissa p̄dict in Parr p̄dict  
 superius men̄ōnat' superius placitat' dic̄ quod  
 ipse p̄ aliqua in eodem placito p̄allegat' ab  
 Actione sua p̄dict' inde solus eundem M. J.  
 habend̄ p̄cludi non debet quia ut prius dic̄  
 quod p̄dict Messuagium horreid̄ stabulum mol-  
 endinid̄ duo al' Edific' pal' sepes fossat' cali  
 Janue Climaces & Premissa p̄dict in Parr  
 p̄dict superius spec' fuer' irreparat' & in de-  
 cal. p̄ defectu repar̄ōn̄ modo & forma put  
 p̄dict M. B. superius in ea parte narrabit.  
 Et hoc pet' quod inquiret' p̄ p̄riam. Et p̄dict  
 M. J. similic' Ideo precept' est vic̄ quod  
 vend' fac̄ hic in Octab' Pur' b̄te Marie 12, &c.  
 p̄ quos, &c. Et qui nec, &c. ad Recogni,  
 &c. quia tam, &c. Vide i Lut. 347, &c.



(42) Averment, That he left two Mill-Stones, and the Parties had not agreed upon their Goodness, and then pleads Covenants performed generally.

**I**N Debt upon a Bond made to the Testator upon Oyer of the Condition, which was for Performance of Covenants in an Indenture made between the Testator and the Defendant: Defendant sets forth the Indenture by which the Testator demised to the Defendant a Mill for Thirteen Years, and the Defendant covenanted to leave the Mill in Repair, &c. and also to leave as good Mill-Stones at the Expiration of the Term, as there were when he entred, Aut aliter daret satisfactiō in monet' p tant' quanti' ill' p'for' forent scdm discretionem Partium que inspiciēbant eadem ad primum vocat' viewed the same at first, put per eandem Indentur' inter al' plenius apparet. Que sunt omnia & singula in Indentur' p'dict' content' ex parte ipsius J. obserband' p'formand' pimplend' seu custodiend'. Et idem J. ulterius dic' quod ipse ad finem & expirationem Termi p'dict' reliquit duo Saxa molaria in & super molendin' p'dict'. Quodque partes Anglice the Parties, que primo inspiciēbant Saxa molaria que fuer' sup molendin' p'dict' tempore intrationis ipsius J. in molendin' illud hucusque non agreaver' quantum duo Saxa p'dict' p ipsum

Averment.

p ipsum ad expirationem Terminū p̄d̄ ut p̄feret relicti fuer p̄sora quam p̄d̄icta Sara molaria in & sup molendiū p̄d̄ict p̄d̄icta tēd in trationis ejusdem J. adinde. Et idem J. ulterius dic quod bene & vere observavit p̄mplebit & custodivit omnia & singula al' Con ventionū p̄missionū concessionū & agreamenti' contem' specificat' & declarat' in Indentur p̄d̄ict' ex parte ipsius J. M. observand p̄for mand p̄implend & custodiend secundum for mam & effectum Indentur p̄d̄icta. Et hoc parat' est verificare. Unde pet' judic si p̄d̄ict R. S. & J. Action suam p̄d̄ict' plus eum habere debeant, &c.

Et p̄d̄ict' R. S. & J. ur' ejus petunt au dit' Indentur p̄d̄ict. Et eis legitur in hec verba R. This Indenture, &c. Qua lecta & audita Idem R. S. & J. ur' ejus dicunt qd ipsi p̄cludi non debent quia dic quod tēd con fectiō Indentur p̄d̄ict necnon eodem tēd quo ipse p̄d̄ict J. M. intrabat in molendiū p̄d̄ict ei ut p̄feret' dimiss' scilicet 26 die Julii An no Regni dicti nup Regis Car 2. 34. supra dicta fuer duo Lapides molares ad valenci am trium librarū remaneid & existiend in eo dem molendiū p̄ usu molendini ill' Quod que ad finem & expirationem Terminū An nozū supradict' in Indentur p̄d̄ict superius mentionat' p̄d̄ict J. M. non reliquit Lapides molares in vel sup molendiū p̄d̄ict tam bo nos quam p̄d̄ict duos Lapides molares fuer dicto tēd in trationē ipsius J. M. in molendiū p̄d̄ict ei ut p̄feret' dimiss' nec dedit ali quam satisfactionem in moneta alicui p̄lone cuicunque p̄ tant' quant' Lapides molares p̄ eundem

Repl', That he left not so good Mill-stones as he found, nor gave any Satisfaction in Money, &c.



eundem J. M. in eodem molendino relicti fuer pesores quam predicti duo Lapides molares in eodem molendino existentem sed predicti intrationis ipsius J. M. Et hoc solumdem R. S. & J. ut ejus parat sunt verisimiliter. Unde per judicem & debum suum predicti unacum dampnis suis occasione detentionis debent illi sibi adjudicari, &c.

Defendant  
by Rejoyn-  
der makes  
a Repetition  
of his former  
Bar.

Et predicti J. M. ut prius dicitur quod ipse ad finem & expirationem Terminum predicti reliquit duo Sata molaria in & super molendinum predicti Quodque Partes Anglice the Parties que primo inspiciebant Sata molaria que fuerunt super molendinum predicti sed intrationem ipsius J. molendinum illi hucusque non agreebatur quantum duo Sata molaria predicti per ipsum ad expirationem Terminum predicti ut preterit relinqui fuerunt pesores quam predicti Sata molaria in & super molendinum predicti predicto sed intrationem ejusdem J. adinde. Et hoc parat est verificare Unde ut prius per judicem & quod predicti R. & J. ab Actione sua predicti habendum precludant, &c. Queritur Demurr.

Upon the Argument the Plaintiff's Counsel objected, That it was incumbent upon the Defendant to procure the Persons, who had the View of the Stones of the Mill, at the Time of the Defendant's Entry, to have adjusted, how much the Stones, left at the End of the Term, were more worth than those; and that in Default thereof, he had broken his Covenant, for he pretended not by his Plea, that he had left Stones as good as the first were. That the Disjunctive Covenant is an Advantage to the Covenantor, and therefore



fore he ought to shew, that the one or the other is performed, and therefore he ought to have procured an Adjudgment in the Case. To which it was answered, That he was to leave as good as he found, or to give Satisfaction in Money, &c. so that the Covenant is in the Disjunctive, and in a Disjunctive Covenant, if one Part of it become impossible, the Covenantor is excused to perform the other Part, and 21 E. 3. 29 b. 15 H. 7. 2. a. and *Dyer* 262. were cited. Justice *Powel* said that Conditions are for the Benefit of the Obligor, if possible, but if impossible the Obligation is absolute. That there is no Impossibility in this Case: If the Viewers cannot be procured to adjust the Damage; yet the Defendant might have left as good Stones as he found, which is the other Part of the Covenant, and that this Case is not (as was alledged) like a Submission to an Arbitrement, for thereby both Parties oblige themselves to stand to the Arbitrement, but neither of them are obliged to procure the Arbitrators to make an Award: But in this Case the Disjunctive Condition being for the Advantage of the Defendant, he ought to have procured the first Viewers to have made an Adjudication of the Damages; and that *Laughter's* Case is good Law, but the Reason given in Co. 5. had been denied. And Justice *Treby* said, it had been adjudged, That if a Man make a Covenant in Consideration of 100 l. to make a Lease to J. S. for his Life before *Michaelmas*, or to repay the 100 l. and J. S. die before *Michaelmas*, the 100 l. shall be repaid. The Plaintiff in the principal Case

## Bar al Covenant &amp; Condition.

Case had Judgment, *Vide* 1 *Lut.* 688. & 695. where 'tis observed, That *Laughter's* Case is reported in 3 *Cro.* 398. more at large than in 5 *Co.*

(43) Defendant pleads he was ready upon the Land before Sun-set to pay the Rent, &c.

The Action was Debt for 550 *l.* Rent by an Executor of an Executor of Assignees, upon an Assignment to them of the whole Term, which the Assignors had in the Park assigned.

**N. E** pdict J. H. p S. M. Attorid suid  
 vend & Def. vim & injur' quando, &c.  
 Et quoad 50 *l.* de pdict 550 *l.* parcelle de Red-  
 dit' pdict p dimid' unius Anni finit' ad Fe-  
 stum Annunciatione be Marie Virginis An-  
 no Regni Dom Regis nunc & Dne Marie  
 nuper Rne Anglie, &c. secundo idem J. H.  
 dic' quod pdict' J. B. & M. B. Actioni su-  
 am pdict inde vers' eum here non debent  
 Quia dic' quod ipse J. H. in & super Fe-  
 stum ill' p spacium unius hore ante occasum  
 solis ejusdem Diei ac post occasum solis  
 Diei ill' fuit in & super parcum pdict ad  
 solvend' eidem J. B. & M. B. eadem 50 *l.* ad  
 Festum ill' ut pferet solubil' Quodque nec  
 pdict J. B. nec M. B. nec eor' aliter nec  
 aliquis

aliquis ex parte sua nec eorum alterius ad-  
tunc & ibm fuer' vel fuit parat' ad recipi-  
end' Reddit' ill'. Et quod Reddit' ill' ad alia  
quod tempus postea hucusque in & super  
parcum ill' cum p'tin' vel aliquam partem  
inde p' eisdem J. B. & W. B. vel eorum  
alterum mie demand' fuit. Et hoc pa-  
rat' est verificare Unde pet' iudic' si pres-  
dict' J. B. & W. B. Action' suam pres-  
dict' inde versus eos here seu manutenere des-  
beant, &c. Et quoad 50 l. de p'dict' 550 l.  
parcell' de Reddit' p'dict' p' al' Dimis' uni-  
us anni finit' (&c. and so plead the same  
Plea as before. Et sic de reliquis separat'  
placitis) Quer' Demurs specially, Et pro cau-  
sis Moracoid in Rege in hac parte iude J.  
B. & W. B. monstrant & Cur' hic offen-  
dunt Causas sublequent' videt' p' eo quod p's-  
dict' J. B. in separabilibus p'litis suis p'dict'  
non p'litavit seu allegavit quod ipse parat'  
fuit ad solvend' eisdem J. B. & W. B.  
p'dict' denar' in p'dict' respectivis p'litis mentis-  
onat' Nec p'fert in Cur' hic denar' ill' fore  
solvend' eisdem J. B. & W. B. Et de eo  
quod placita ill' sunt duplic' incerta & ca-  
rent forma, &c. Def. junq' in Morat'.

*Note, In Term. Trin. 1696. Judgment was  
given for the Plaintiff, by the Opinion of the  
whole Court of the King's Bench. Vide 2 Cro.  
423. as to the Tender, Brooke tous temps  
priest, 25 Brooke, Tender 6. 11. 18. 20. Et  
vide 1 Lut. 364. 368.*

*Bar,*



*Bar de Rent*, That it was not reasonably demanded *secundum formam & effectum*, &c. *Rejo. & Issue.* Clerk's Ass. 403.

(44) Clerk & Ux' *versus* Dom' Scrogg's Executric' Will. S. Mil' Bar by Utlary in the Husband.

The Declaration was Covenant upon an Indenture, made between the Plaintiffs and the Testator of the Defendant, setting forth that the Plaintiffs being seized of a Messuage, &c. in H. demised the same to the Testator for Ten Years, at 40 l. Rent, with Covenants to pay Rent, and to leave the Premises in Repair without making any Waste. 1. Breach for Non-payment of Rent. 2. For that the Messuage, &c. was out of Repair. 3. That the Testator rooted up and destroyed several Trees.

Bar'.

¶ **E**T p̄dict Dom' A. S. per T. P. Actionem suam p̄dict inde vers' eam habere non debent Quia dicit quod als scilicet Term' Sci Michis Anno Regni Dñi Willielm' tertii nunc Regis & Dñe Marie nuper Rñe Angl', &c. secundo quidam C. S. Gen' Wm' Attorn Cur' p̄dict Dñi Regis & Dñe nuper Rñe de Comuni Banco hic scilicet apud Westm' in

Com<sup>o</sup> M<sup>o</sup>do impl<sup>o</sup>abit p<sup>o</sup>ict<sup>o</sup> C. in p<sup>o</sup>ict<sup>o</sup> Cur<sup>o</sup> de Com<sup>o</sup> Banco hic de placito transgr<sup>o</sup> super Calum. Et p<sup>o</sup>ict<sup>o</sup> C. p<sup>o</sup> eo quod non ven<sup>o</sup> hic in p<sup>o</sup>ict<sup>o</sup> Cur<sup>o</sup> de Com<sup>o</sup> Banco p<sup>o</sup>ict<sup>o</sup> p<sup>o</sup>lat<sup>o</sup> C. inde responsur<sup>o</sup> secund<sup>o</sup> Legem & Cons<sup>o</sup> hujus R<sup>o</sup>ni Angl<sup>o</sup> in exigend<sup>o</sup> p<sup>o</sup>ict<sup>o</sup> fuit ad utlagand<sup>o</sup> in London<sup>o</sup> & ea oc<sup>o</sup>cone postea scilicet die Lune p<sup>o</sup>ior<sup>o</sup> post Festum S<sup>o</sup>ci Marc<sup>o</sup> Evangeliste Anno Regni dicti Dom<sup>o</sup> Regis nunc & D<sup>o</sup>ne Marie nuper Regine Anglie, &c. tertio in L. p<sup>o</sup>ict<sup>o</sup> in deba<sup>o</sup> juris forma utlagat<sup>o</sup> fuit put<sup>o</sup> p<sup>o</sup> Record<sup>o</sup> & p<sup>o</sup>ocess<sup>o</sup> inde in Cur<sup>o</sup> dicti Dom<sup>o</sup> Regis nunc de Com<sup>o</sup> Banco p<sup>o</sup>ict<sup>o</sup> hic apud Westm<sup>o</sup> p<sup>o</sup>ict<sup>o</sup> jam residen<sup>o</sup> ac p<sup>o</sup> p<sup>o</sup>ocess<sup>o</sup> inde sub pede sigilli ejusdem Cur<sup>o</sup> huic placito annex<sup>o</sup> plenius liquet & apparet. Que quidem Utlagaria s<sup>o</sup>lus p<sup>o</sup>refat<sup>o</sup> Cor<sup>o</sup>am in forma p<sup>o</sup>ict<sup>o</sup> h<sup>o</sup>ic & p<sup>o</sup>mulgat<sup>o</sup> adhuc in suis plen<sup>o</sup> roboze & effectu remanet m<sup>o</sup>id<sup>o</sup> reversat<sup>o</sup> seu annihilat<sup>o</sup>. Et hoc parat<sup>o</sup> est verificare. Unde per<sup>o</sup> judic<sup>o</sup> si p<sup>o</sup>ict<sup>o</sup> C. & Co. du<sup>o</sup>mmodo idem Co. sic utlagat<sup>o</sup> existit Actio<sup>o</sup> suam p<sup>o</sup>edict<sup>o</sup> vers<sup>o</sup> eandem A. here debeant, &c. Quer<sup>o</sup> Demurr<sup>o</sup>.

An Exception was taken to this Plea by the Plaintiff's Counsel, viz. That the Outlawry was pleaded in *Bar* to all the Declaration, which ought not to be, for the Damages to be recovered for the Breach of the Covenant for Repairs are not forfeited by the Outlawry, for that such Damages are altogether uncertain: But on the other Part it was said, that the Rent was forfeited to the King by the Outlawry

lawry, and therefore the Outlawry might well be pleaded in *Bar* to the Action, and shall be good for that. And as to the Objection, that the Action founded meerly in Damages, as to the Repairs he cited the Case of *Markham* and *Pitts*. 3 *Leon*. 205. In *Trover* and *Conversion*, and *Webb* and *More's* Case. 2 *Ven. en Assumpsit sur quantum meruit*. But notwithstanding the Court gave Judgment for the Plaintiff, because the Plea was intire to the whole Action, (and nothing pleaded over) and as to the Damages for not repairing, they are no more forfeitable by Outlawry, than Damage for Battery or Trespass, and then the Plea being intire, and bad in Part, is ill in the whole as well in this Case as others. But the Court said, That the Defendant before Impar lance might have pleaded Outlawry in Abatement of the whole Writ, or in *Bar* of the Rent, (because that is a certain Duty) and in Abatement as to the Repairs; And as to the Case in the third *Leon*. it was said, that was an Action of Property, and the Thing it self is forfeited by the Outlawry; and as to the *quantum meruit* the Foundation of that Action was a Duty, although to be recovered by way of Damages.

Note, The Plea was *venit & defendit vim & injur' quando, &c.* but no Notice was taken thereof; as to the pleading in Abatement of the Writ, in Part or in the Whole, *vide* the Case of *Belafise* and *Hester*. 2 *Lut*. 1589.

Observe also, that there was no Need of producing the Record of the Outlawry, *sub pede sigilli*, because the Plea is in *Bar* of the Action



Action, and also for that the Record of the Outlawry is in the same Court, and so 'tis resolved in *Draycote and Curson's Case*, 1 *Lut.* 39, 40. But if the Plaintiff had replied and pleaded *nul tiel Record*, the true formal Conclusion of such Plea had been. *Et hoc parat' est verificare qualitercunque, &c. prout Cur' consid'. Et quia Justic' hic se advisare volunt super inspection' Recordi per præd' Defend' superius allegat' dies Dat' est partibus præd' hic usque, &c.*

As it is in *Dyer*, 227, 228. In which Case upon a Plea of *Nul tiel Record* of an outlawry, the Entry was.

*Et dict' est præfat' Defend' quod habeat Record' hic tali die, &c. suo periculo :* And there 'tis said, That the Record being in the said Court, that Entry was not formal. But there are some Precedents in the like Cases, in which the Plaintiff replies, *que est tiel Record.* *Et hoc parat' est verificare per Record' ill'*, and then the Entry is, *Quod petit quod Record' illud videat' & inspiciat', &c.* as in *Robinson's Entries* 164. *Hern.* 278. *Brownl. Judic. Writs, tit. Scire facias*; the last Precedent under that Title, & *Latin Brownl.* 433. But in none of those Precedents is any Mention that the Party, which pleads the Record, *habeat Record' ill' ad tiel jour suo periculo.* *Vide 2 Lut. 1510. 1514.*

(45) Debt for 2200 *l.* upon an Indenture between the Parties, 20 *July 3 W. & M.* by which the Plaintiff in Consideration of  
(Part IV.) L 1100

## Bar al Covenant &amp; Condition.

1100 l. to be paid to him, &c. covenanted with the Defendant, That the Plaintiff should assign, &c. to the Defendant upon the 30 of Jan. next ensuing, Ten Shares in the Corporation of the Linen Manufacture. And the Defendant covenanted that he would then accept them, and at the said Time would pay the Plaintiff the said 1100 l. and also all such Sums of Money as the Plaintiff should pay into the Stock upon Account of the said Ten Shares, and both Parties obliged themselves unto the other in 2200 l. to perform the Covenants. Breach assigned in Non-payment of the said 1100 l. to the Plaintiff upon the said 30 of Jan. after the Date of the Indenture.

ff. **E**t poict J. C. p C. D. Actoꝝd suū  
 veni & defend vim & injur quando,  
 &c. Et dic. quod poict J. C.  
 (Actioꝝd non) quia protestando  
 quod Parr poict & Materia in  
 eadem content' modo & forma  
 poict declarat' minus suffici-  
 en in Lege exist' ad poict J.  
 C. Actioꝝd suam poict vers' ip-  
 sum J. C. habens manuteneñd  
 p placito idem J. C. dic' quod ipse sup vel  
 ante poict 30 diem Jan' prox' sequen' Dat'  
 Indentur poict non direrit appunctuabit vel  
 assignabit aliquam personam sive personas cui  
 vel quibus poict J. C. assignabit & trans-  
 ferret seu transferri causaret poict decem pro-  
 portiones

Bar, That the Defendant  
 on or before the said 30 Jan.  
 had not appointed any Per-  
 son to whom the Plaintiff  
 should assign, and that the  
 Plaintiff upon the said 30  
 of Jan. had not assigned to  
 the Defendant himself.

porciones Anglice Shares p̄dict Credit' in General conjunct' peculio Angl general Joint-Stock Corporation Dñi Regis & Dñe Regine p Lincat' Manufactur' in Anglia p̄dict Quodque p̄dict J. C. sup eundem tricesimum diem Jaid non assignavit & transulit seu transferri causavit eidem J. C. dict decem p̄portiones Anglice Shares, p̄dict Credit' in General conjunct' peculio Angl general Joint-Stock Corporation' ill secund formam & effectum Indentur p̄dict sicq p̄dict summa 1100 l. non debent seu fuit solubit eidem J. C. vel assigni suis p ipsum J. C. ad vel super eundem 30 diem Jaid p formam Indentur ill put p̄dict J. C. superius suppon'. Et hoc parat' est verificare Unde pet' judic si p̄dict J. C. Action suam p̄dict vers' eid here debeat, &c.

Et p̄dict J. C. dic' quod ipse (p̄cludi non) Repl' Quod Quia dic' quod ipse p̄dict J. C. sup p̄dict assignavit se. 30 diem Jaid assignavit & transulit p̄dict J. cund' &c. C. dictas decem porciones Anglice Shares, p̄dict and tender Issue. Credit' in general conjunct' peculio Anglice general Joint-Stock Corporation p̄dict secund formam & effectum Indentur p̄dict. Et hoc pet' quod inquirat' p priam. Def. Demur.

Upon the Argument the Defendant's Counsel objected, That no Place was alledged in the Replication, where the Plaintiff had assigned the Ten Shares to the Defendant. To which the Plaintiff's Counsel said 'twas not necessary, because the Covenants were reciprocal, and the Performance of one did not depend



upon the Performance of the other. To which was replied, That the Assignment ought to precede the Payment of the Money, because the Covenant for the Payment of the 1100 *l.* was in the Nature of a Condition or Defeasance to save the Forfeiture of the said 2200 *l.* and therefore shall be taken most favourably for the Obligor; so that if the Matter of the Condition may have two Intendments, the best shall be taken for the Obligor, and cited 17 *Dyer, a.* by which the Payment of the Money ought to refer to the Acceptance of the Assignment, and not to the Day to which the Assignment was to be made; and if so, Then 'twas impossible that the Defendant should accept the Assignment before it was made; so that the true Sense and Meaning of the Deed was, that the Plaintiff should assign and transfer the Shares upon the Thirtieth of *January*, and the Defendant should accept of it, whereby upon such Acceptance the Money ought to be paid: And so was the Opinion of the Court, and thereupon the Plaintiff prayed Leave to discontinue, and had it.

*Note,* That the Replication was to no Purpose, because no Place was alledged where the Plaintiff had assigned, &c. See 1 *Lut.* 490, 492.

(46). **D**E B T for 553 *l.* by the Plaintiff as Administrator of *M.* his Wife, and declares upon an Indenture, dated 27 *Dec.*  
16 *Car.*

16 Car. 2 *per quam Testatum fit*, That the Defendant covenanted to pay to the Intestate 200 *l.* within Three Months after her Marriage, if she should be then alive, and 200 *l.* more within Two Years after her Marriage, if she or any Issue of her Body should be then alive, with Interest for the said 400 *l.* with Averment, that she was married 16 May 1670. and Notice to the Defendant, and Averment that she lived Five Years after her Marriage, with a Computation of the Interest and Sum *in toto*.

To this Declaration the Defendant pleaded *non est factum*, and Issue thereupon, and Verdict for the Plaintiff. And Serjeant *Levinz* moved in Arrest of Judgment, and took Three Exceptions, *viz.*

1. That the Action is only brought for 553 *l.* But by Computation the true Debt by the Declaration appears to be 556 *l.* and 'tis not said how the Residue is discharged, *nec quid inde venit*.

2. That the Declaration is by way of *Testatum existit*, which may be good in Covenant, but ill in Debt.

3. That by the Declaration 'tis alledged, That Administration was granted to the Plaintiff by the Archbishop of *Canterbury*, the which being a local and judicial Act, and being made out of his Province, is void. And hereupon a Rule was made to arrest Judgment, *nisi*, &c.

1. To the first Exception it was answered, That it was only a Mistake of the Clerk, which

## Bar al Covenant &amp; Condition.

should not prejudice the Plaintiff, especially after Verdict, and cited the Case of *Spar and Drury*. 2 Cro. 569, &c. and hereupon the Exception was not allowed. *Sed quære*. 1 Lut. 535.

2. To the second it was answered, That the Difference is between Debt upon a Demise, and Debt upon Covenant: in the first 'tis ill, and in the other good, as resolved in *Croker and Child's Case*. 3 Keb. 94. and 115. 2 Lev. 74, and 75. and thereupon this Exception was over-ruled.

3. To the third Exception it was answered, That the granting of the Letters of Administration was not a judicial Act, but ministerial, and the Bishop is as a Person designed and appointed by the Statute. *Helyar's Case* 1 Jones 234. And so the Plaintiff had Judgment. *Vide* 1 Lut. 533. 535.

(47) Statute *de Non-Residence* pleaded in Bar, by a Vicar against his Bond for performing Covenants of a Demise, Parcel of his Vicarage.

¶ **Q**uibus lect' & auditis idem W. S. dic' quod p'dict T. M. Actionem suam p'dict vers' eum habere non debet, quia dic' quod in Statuto in parl' Dñe Eliz. nuper Regine Angl' apud Westm' in Com' Mido' secund' die Aprilis Anno Regni sui 13. Tent' edit' int' al' Inactitat' fuit Authozitate ejusdem Parliamenti,



Parliamenti. ita quod victus appunctuar' p Ecclesiasticis Ministris per corrupt' & inditea' tractaciones (Anglice Dealings) non transferant' ad alios usus. Quod nulla Dimissio Anglice Lease, post quintum decimum diem Maii prox' sequen' initium ejusdem Parliamenti fiend' de aliquo beneficio vel Ecclesiast' promotione cum Cura vel de aliqua parti' eorundem & non exisse' impropria' duraret diutius quam Dimissio Anglice the Lessor, foret Ordinarie residens & intersvens Cure humod' Beneficii sine Absentia ultra octoginta dies in aliquo uno Anno. Sed quod quelibet humod' Dimissio immediate super humod' Absentia cessaret & vacua foret. Et Incumbens sic offendens p eadem amitteret pficuum unius Anni dicti Beneficii sui distribuens p Ordinarium inc' Pauperes Paroch ill' Arciam in Statuto in Parliamenti dicti' Dne Regine Elizabeth apud Westm' pdict octavo die Maii Anno Regni sui 14 tent' inc' cetera Inactit' fuit authorit' ejusdem Parl' quod cum dis-  
 Off Malevoli (Anglice ill disposed Persons) defraudassent vera' intentionem pdict' ul' mentionat' Stat' in pdict' Anno 13 Script' Obl' Anglice Bonds, & Conventiones permitendi alias personas gaudere Ecclesiasticis vicibus & fructibus eorundem, pro eo quod humod' Script' Obl' Conventiones in Lege non computarent' fore Dimissiones licet revera attingebant ad tantum. Quod omnia Script' Obl' Contractus Promissiones & Conventiones extunc impostertum fiend' p toleratione vel permissione alicujus plone ad aliquod Beneficium vel Ecclesiast' promotionem cum Cura vel

pro captione commoditat' & pficuoꝝum eozuꝝ  
dem al' quam tal' Scripta Dbi' & Conven-  
tiones qual' conficerent' p' assuꝛancia alicuꝝus  
Dimissionis ante tunc faci' ad omnes inten-  
tiones & p'posita adjudicarent' talis vigoris &  
validitatis & non al' qual' Dimissiones fact'  
per eodẽm Rectoꝝes humod' Beneficioꝝum &  
Ecclesiasticarum promotionum cum Cura, put  
p' Actum de Anno 14 supradicto int' al'  
plenius apparet. Et idem W. S. ulterius  
dic' quod ipse diu ante confectioẽ Scripti  
p'dict' hic in Cur' plac' necnon eodem tem-  
poꝝe confectioẽis esuꝝdem Scripti fuit Wica-  
rius Ecclesie Parochial' de G. & F. in Comd'  
Eboꝝum existẽd' Beneficiuꝝ cuꝝ Cur' Anis-  
marum. Et fuit inde scit' in Dominico suo  
ut de Feodo in iure Wicarie sue p'dict'. Et  
sic inde scit' existẽd' p'dict' 13 die Junii Anno  
Regni dicte Dñe Regine nunc p'imo sup'ra-  
dicto apud L. in Paroch' & Ward' p'dict' p'  
Indentur' p'dict' in Conditione p'dict' superius  
spec' dimisit p'fat' T. unum Messuagium,  
(tc.) cum p'ciu' in R. C. in Comd' p'dict'  
parcell' Wicarie p'dict' cum p'ciu' habẽd' & oc-  
cupand' sibi & Assign' suis usque finem & Ter-  
minuꝝ 21 Annoꝝum extunc p' sequẽd' & ples-  
nar' complẽd' & finiẽd' Virtute cuꝝus Dimis-  
sion' p'dict' p'fat' T. in eadem Tenementa cum  
p'ciu' intrabit & fuit inde possess'. Et idem  
W. S. ulterius dic' qd' Scriptum p'dict' hic  
in Cur' p'olat' faci' fuit p' assuꝛancia Dimissio-  
nis p'dict' p'fat' T. in forma p'dict' faci'. Et  
idem W. ulterius dic' quod post Dimissionẽ  
p'dict' p'fat' T. in forma p'dict' faci' ac infra  
p'dict' Terminuꝝ 21 Annoꝝum idem W. Cur'  
Beneficii p'dict' inservire renuit ac seipsum



a Beneficio ill' ultra 80 dies in Anno dicte Dñe Regine nunc tertio absentabit per quod Script' p'dict' hic in Cur' plac' Wigore p'dict' Stat' de Anno 14 supradicto vacuū in Legge devenit. Et hoc parat' est verificare. Unde pet' iudicium si p'dict' T. Actionem suam p'dict' vers' eum habere debeat, &c.

Et p'dict' T. dic' quod ipse (p'cludi non) quia dic' quod p'dict' W. post dimissionē p'dict' eidem T. in forma p'dict' fact' ac infra p'dict' Terminū 21 Annorum non absentabit seipsum a Beneficio p'dict' ultra 80 dies in Anno Regni dicte Dñe Regine nunc 3 supradicto put idem W. superius allegavit. Et hoc pet' quod inquirat' per P'riam. Et p'dict' W. similiter Ideo preceptū est Vic', &c. Vide Thomp. 205.

The like by one that was bound with the Rector upon a Demise of Part of his Rectory, &c. *Vide Thompson's Entries, 215.*

To Debt on Bond conditioned to perform Articles for the Enjoyment of Glebe-Lands and Tithes, the Defendant pleads in Bar, Conditions, and Covenants performed specially.

**Q**uando, &c. Et petit auditū Script' Obl' p'dict' & ei legitur, &c. petit etiam audit' Conditionē ejusdem Scripti & ei legitur



gitur in hac verba, ff. Whereas the above-named G. A. hath by his Deed of Demise, &c. Then the above written Obligation to be void, or else to be of full Force in Law. Quibus lectis & auditis idem G. dic' quod p'dict J. & S. actionem suam p'dict plus eum here seu manutenere non debent quia dic' quod p'dict Indentur p'dict in Condition superius spec' fact' fuit die & Anno supradict' apud L. pres dict in Paroch & Warda p'dict int' p'sat G. p nōen G. A. cl'ici & Rector de R. in Com Midd' ex una parte & p'sat J. & S. p nōia J. R. de — in Com W. Ar & S. R. de --- in Com Midd' Gen' ex altera parte cujus alteram partem sigillis p'dict J. & S. sigillat' p'dict G. hic in Cur' p'sert cujus dat' est eisdem die & Anno p quam quidem Indentur p'dict G. p & in Cons' Annual' Reddit' & Conventioind postea in eadem Indentur reserbat' & content' ac p divers' al' bon' & valubil' Consideratioind ipsum G. adinde moven' dimississet concessisset posuisset & ad firmam locasset & p eandem Indentur dimissit concessit posuit & ad firmam locavit p'sat J. & S. omnes & singlas terras Glebal' p'sat Ecc'lie Rectorie Paroch app'tinen' acetiam tot' ill' & illas decimas grani feni Agnorum & lane ac omnes al' decimas quascunqz tam magnas quam parvas de & accrescend' & que deberent debet' & accrescerent ex p'dict Rector' & ex qualibet parte & parcel' inde hēnd' & tenend' omnes & singlas dict' terras Glebal' & dict' decimas tam magnas quam parvas cum suis & quibuslibet eoz p'ind p'sat J. & S. Executoribus Administrator' & assign' suis

suis a primo die Passi tunc ult pterit p &  
 durand plen termino & tempore 50 Anno-  
 rum abinde ppor' sequend & plenar' complend  
 & finiend si pdict G. tandiu viveret pdict  
 J. & S. reddend & solvend pinde & erin-  
 de annuatim & quolibet Anno durand dicto  
 termino p'at G. Executor Administratoribus  
 vel Assign' suis annual' reddit' 12 l. Ster-  
 ling pro pdict primis 5 annis pdict termi-  
 ni ad & sup annual reddit' 60 l. Sterling, pro  
 remanend parte pdict Termini super testum  
 omnium sanctorum & Philippi & Jacobi an-  
 nuatim p equal' portionem prima solutio in-  
 de fiend sup festum omnium sanctorum ppor'  
 sequend dat' Indenture pdict & pdict' J. & S.  
 pro seipsis Executor Administrator & Assign'  
 suis convener' concessit & agreebat ad  
 & cum p'at G. Hered Executor Admi-  
 nistrator & Assign' suis quod ipsi J. & S. Exe-  
 cutor Administrator & Assign' sui deberent &  
 bellent de tempore in tempus solvere p'd refer-  
 bat annual' reddit' 12 l. Sterling pro p'd primis  
 quinque annis dicti termini & annual' reddit'  
 60 l. Sterling durante remanend parte dicti  
 termini ad festa p'd annuatim & quolibet  
 Anno p equal' portiones Et p'd G. pro se-  
 ipso Hered Executoribus Administrator & As-  
 sign' suis p Indentur p'd convenit concessit  
 & agreebit ad & cum p'd J. & S. Executor-  
 ribus Administratoribus & Assign' suis quod  
 licet & licitum foret ad & pro p'd J. & S.  
 Executor Administrator & Assign' suis habere te-  
 nere possidere & gaudere de tempore in tempus  
 durand dicto termino & ad eorum ppor' Opus  
 & usum cape omnes & singlas terras Glebal'  
 & decimas tam magnas quam parvas que ac-  
 crescerent



creſcerent vel debit' ſozent ab vel extra pꝛeſ  
 Rector' & ab vel extra aliqua parte inde Et  
 pꝛeſ G. ꝑ Indentur' pꝛeſ obligabit ſe Heres  
 Executor' Administrator' & Aſſign' ſuos ſub  
 penalitat' 600 l. quod ipſi pꝛeſ J. & S. Exe-  
 cutor' Administrator' & Aſſign' ſui herent te-  
 nerent & pacifice gauder' terras Glebal' & des-  
 cimas pꝛeſ tam magnas quam parvas Rec-  
 tor' Eccleſie & Paroch' pꝛeſ durand' pꝛeſ  
 Termino Et pꝛedici' G. ꝑ Indentur'  
 pꝛeſ warrantizabit et defendit eaſdem pꝛeſ  
 J. & S. Executor' Administrator' & Aſſign'  
 ſuis ꝑꝛo & durand' pꝛeſ termino ꝑꝛout ꝑ In-  
 dentur' pꝛeſ plenius apparet que ſunt om-  
 nia & ſingula Convention' ꝑꝛoviſion' & Agre-  
 ament' in Indentur' pꝛeſ mentionat' & con-  
 tent' Et idem G. dic' quod ipſe a tempore  
 confection' Indentur' pꝛeſ hucusqꝫ bene & fi-  
 delit' obſervabit ꝑꝛozmabit ꝑꝛimplebit & cuſto-  
 dibit oia & ſingula convencon' ſolution' ꝑꝛo-  
 viſion' & Agreement' in Indentur' pꝛeſ ſupius  
 ſpecificat' ex parte ſua obſervand' ꝑꝛozmand'  
 ꝑꝛimplend' cuſtodierend' ſecundum formam & ef-  
 fecum Indentur' pꝛeſ Et hoc parat' eſt ve-  
 rificare Unde ꝑet' Iudic' ſi pꝛeſ J. & S. Ac-  
 tion' ſuam pꝛeſ verſus eum here ſeu manus  
 tenere debeant, &c.

*Repl. Proteſtando non performavit ; ꝑꝛo pla-  
 cito, That the Defendant reſigned the Rec-  
 tory to the Biſhop of Meath, and they could  
 not enjoy the Glebe-Lands, and Tithes, &c.  
 ſecund' Indent', &c. Rejoinder non reſignavit.*



(48) Debt upon the Statute of 29 Car. 2.  
for Augmentation of Vicarages.

The Plaintiff declares, That the Dean of Lincoln, by Indenture the 24th of July, 23 Car. 2 Reg. *quam idem Def. penes se habet*, demised to the Defendant the Rectory of M. for three Lives, rendering to the Dean and his Successors 20 l. Rent *per Ann.* and that the Defendant by the said Indenture covenanted with the Dean, That he would find and provide a sufficient Minister or Priest to serve in the Church of M. such as the said Dean and his Successors should allow and approve, and pay to the said Priest 40 Marks *per Ann.* at the least, by equal Portions at *Michaelmas* and *Lady-Day*; and then sets forth the Statute of 29 Car. 2. made for the perpetuating Augmentations to small Vicarages, by which it is Enacted, that every Augmentation reserved, or made payable to any Vicar, Curate, &c. shall continue payable to them, and that they shall be adjudged in the actual Possession of them, and may have Remedy to recover them by Distress or Action of Debt; and says further, That the Plaintiff the 5th of July, 32 Car. 2. by the Allowance and Approbation of the Dean, at the Nomination of the Defendant, and by Licence of the Bishop was admitted, & *abinde hucusque fuit Curat'* of the Church of M. And for 40 Marks of the Pension due for one Year, he brings this Action.

R

ff. Et

Bar, Per Stat.  
13 Car. for  
not reading  
Common  
Prayer.

**E**T p̄d M. per S. P. Attorū suū v̄d  
& def. vim & injur' quando, &c. Et  
dic' quod p̄d C. (Action) non) Quia dic'  
quod bene Et verum est Quod p̄d nup  
Decan' dimisit concessit & ad firmam tradi-  
vit eidem W. Rectoriam parsonag' Tene-  
menta & Premissa p̄d cum p̄tind' ha-  
bend' & tenend' eidem W. & heredibus suis pro  
& durand' vitis p̄d W. W. C. & C. sub an-  
nual' Redit' p̄d in Parr' p̄d superius  
mentionat' Quodque p̄d M. convenit cum  
p̄fat' nuper Decano p̄ Indentur' p̄d modo  
& forma p̄out p̄d C. p̄ Parr' suam p̄d  
suppon'. Et idem M. ulterius dic'  
Quod ipse p̄d W. 25 die Nov' Anno Domi  
1672. apud M. W. p̄d nominabat p̄fat'  
C. p̄d nup Decano fore Curat' Eccle' de  
M. W. p̄d Et quod ipse p̄fat' nup Deca-  
nus superinde postea eodem die & Anno al-  
locabat & opprobabat p̄d C. fore Curat' p̄d  
Eccle' de M. W. p̄d per quod p̄d C.  
postea eisdem die & Anno fuit in actual' Pos-  
session' ejusdem beneficii Virtute tal' nomina-  
tion' & approbation' p̄d. Sed idem M. dic'  
quod per quendam Actum in Parl' Domini  
Regis nunc octavo die Maii Anno Regni sui  
13 apud Westm' in Com' Mido' tent' edit'  
int' alia Inactitat' fuit Auctoritate ejusdem  
Parl' Quod omnes & singuli Ministri in a-  
liquo Cathedrali Collegiat' sive parochial'  
Ecclesia sive Capella sive al' loco publice ado-  
ration' infra hoc regnum Angl' obligat' essent  
dicere & uti Patutind' p̄cation' vespertind' p̄s-  
caçōd



racion celebracion & administration Ambos-  
 rum Sacramentoꝝ & omnem al' publicam  
 & communem pꝛecationem in Eli ordine  
 & forma qual' mentionat' est in libro in  
 eodem Statuto mentionat' eidem Statuto an-  
 nexat' & conjunct' Intitulat' The Book of  
 Common Prayer, and Administration of the  
 Sacraments, and other Rites and Ceremonies  
 of the Church, according to the Use of the  
 Church of *England*, together with the Psalter  
 or Psalms of *David*, pointed as they are to  
 be sung or said in the Churches, and the  
 Form or Manner of making, ordaining and  
 consecrating of Bishops, Priests and Deacons.  
 Et ulterius p eundem Statut' Inactitat' fuit  
 Quod quelibet persona que extunc deinceps  
 presentat' sive collat' esset sive posu' in al-  
 iquo Ecclesiast' beneficio sive pꝛomocōe infra  
 hoc Regnum Angl' in Ecclesiast' Capella sive  
 loco publice adozationis spectand' dict' Bene-  
 ficio sive pꝛomocōe suis infra duos menses pꝛ'  
 postquam esset in actual' Possessionē dict' Ec-  
 clesiastic' benefic' sive pꝛomocōe sup aliquem  
 diem dominicum aperte publice & solemnit'  
 legeret matutinū & vespertinū pꝛecationē ap-  
 punctuat' legendū per & iuxta pꝛdict' Librum  
 Cois pꝛecationis ad tempora p eundem Li-  
 brum appunctuat' sive appunctuand'. Et post  
 hanc lectionē earundē aperte & publice coram  
 Congregatione ibm assemblat' declararet sin-  
 cerum assensum & consensum sua usui omniū  
 in dicto Libro content' & pꝛescript' iuxta for-  
 mam in eodem Statuto ante appunctuat', viz.  
 I do hereby declare my unfeigned Assent and  
 Consent, to all and every Thing contained  
 and



and prescribed in, and by the Book intituled, The Book, &c. (as above) Quodque omnis & quelibet c'lis persona que absq; aliquo legali impedimento allocand & approband p Ordinarij loci negligeret sive recusaret facere eadem infra tempus p'dict sive in Casu illis impediment' infra unum mensem p'ior' post tal' impediment' remot' ipso facto deprivat' esset de omnibus suis Ecclesiastic' beneficiis & promotionibus. Et quod abinde licet & licitum esset ad & p omnibus Patron' & Donator' omnium & singulorum diccorum Ecclesiasticorum benefic' & promotion' sive aliquibus eor' juxta respectiva recta & titulos p'sentare sive conferre Anglice collate ad eadem sicut p'sona sive p'sone sic ostendend' sive negligend' mort' esset sive essent put p eundem Statut' int' al' p'lenius continetur Et p'dict M. ulterius dicit quod p'dict C. infra duos menses p' sequend' postquam ut p'fertur posu' & investigat' fuit in actuali possessione Ecclesie de M. W. p'dict sup aliquo die D'nico post lectionem matutina & vespertina p'cacon' appunctuat' legend' p & juxta p'dict Librum Communis p'caconis ad tempora p eundem Librum appunctuat' p ipsum lect' in Ecclesia de M. W. p'dict non declarabit sincerum assensum & consensum sua Qui omnium in p'dict Libro content' & p'script' juxta formam p'cedat' p Stat' p'dict ut p'fertur edit' & inactitat' secundum formam & effectum Act' ill' ipso p'dict C. durand' p'dict spacio duorum mensium p' sequend' postquam ut p'fertur fuit in actual' possessione Beneficii sui p'dict nullum habent' legale impediment' p Ordinarium Locum ill' allocat' sive

sive approbat' Sed sincerum assensum & consensum sua omnium & singulorum in p̄dicto Libro content' p̄ tempus p̄dicti iuxta formam & effectum Statuti p̄dicti declarare neglexerit & recusabit Per quod ipse idem C. virtute Statuti p̄dicti deprivat' devenit de Beneficio suo p̄dicto tanquam ipse p̄dicti C. actualit' mortuus fuisset Quodq; p̄dicti W. ad aliquod tempus post p̄dicti 25 diem Novembri' Anno Dñi 1672. supradict' non nominabat p̄fat' C. p̄dicti nup̄ Decano fore Curat' Eccleie de H. W. p̄dicti Et hoc parat' est verificare Unde pet' iudic' si p̄dicti C. Actionem suam p̄dicti inde solus eum here debeat, &c.

Et p̄dicti C. dicit quod ipse (p̄cludi non) Quia dicit quod bene & verum est quod p̄dicti W. eodem 25 die Novembri' Anno Dñi 1672. in plito p̄dicti supius mentionat' nominabat p̄dicti C. p̄fat' nup̄ Decano fore Curat' Eccleie de H. W. p̄dicti Et quod ipse idem Decanus supinde postea eisdem die & Anno allocabat & approbabat p̄dicti C. fore Curat' Eccleie p̄dicti per quod p̄dicti C. fuit & continuavit in actuali possessione ejusdem Beneficii usque ad quintum diem Junii in nare p̄dicti declarat' Et p̄dicti C. quinto die Junii sic in possessione existent' ex assensu & p̄missionem Anglice Sufferance p̄dicti W. & p̄allocacionem & appbationem p̄dicti nup̄ Decani ac p̄licenciam p̄dicti R. modo Archiep̄i Ebor' p̄dicti Curat' Eccleie p̄dicti de hō modo admissus fuit & adhuc Curat' ibm existit, Et idem C. ulterius dicit quod ipse idem C. infra duos menses p̄ post quintum diem Junii in Parr' p̄dicti spec' sup̄ diem Dominici

(Part IV.)

M

cum



cum scilicet 13 die Junii Anno 32 supradicti  
 so in p̄dict Ecclesia de M. W. p̄dict aperte  
 publice & solemniter legebat Statutū & vesp̄  
 cū p̄caōnem appunctuat' legend' p̄ & juxta  
 p̄dict librum corā p̄caōnis ad tempora p̄  
 eundem librum appunctuat' Et post talem  
 lectionem eorundem adtunc & ibidem ap̄te &  
 publice corā Congregatione itē assembleat'  
 declaravit sincerum assensum & consensum sua  
 usui omniū in dicto Libro content' & p̄  
 script' juxta formam in p̄dict Statuto in p̄  
 dict p̄lito in Barra mentionat' appunctuat'  
 videlicet in forma sequen', I *Charles Carver* do  
 hereby declare my unfeigned Assent and Con-  
 sent to all and every Thing contained and  
 prescribed in and by the Book intituled,  
 the Book of Common Prayer and Admini-  
 stration of the Sacraments, and other Rites  
 and Ceremonies of the Church, according to  
 the Use of the Church of *England*, toge-  
 ther with the Psalter or Psalms of *David*,  
 pointed as they are to be sung or said in  
 Churches; and the Form and Manner of Ma-  
 king, Ordaining, and Consecrating of Bishops,  
 Priests and Deacons, secundū formam &  
 effectum Statuti p̄dict Et hoc parat' est ve-  
 rificare Unde pet' Judicium & Verbum suum  
 p̄dict unacum dampnis suis oēcone detentōn  
 Mebi illi sibi adjudicari &c. Def. moratur in  
 Lege Et quer' jung' in morat'.

Upon the Argument these Points were  
 agreed by the whole Court, That such a  
 Stipendiary may be within the Statute of 13  
*Eliz.*



*Eliz.* for Conformity, notwithstanding the Words in the Statute, that the Patron shall present as if he was dead, and no Presentation requisite in this Case, but only the Nomination to the Dean and Approbation by him. So 1 *Cro. Bandenorke* and *Mackelfy*, a Donative is within the Statute of Simony, although the Statute speaks of a Presentation; and so it was said to be resolved in this Court within Two Years then last, in this same Case between the said Parties, but Judgment was then given against the Plaintiff upon other Exceptions. Secondly, That the Declaration was good without shewing the Indenture, it not belonging to the Plaintiff, except the Counterpart, and therefore good, declaring that the Defendant *penes se habet*, and the Plaintiff enabled to sue an Action thereupon by the Stat. 29. Car. 2. Thirdly, That Debt lies in this Case, although the Reservation is upon a Lease for three Lives by the Words of the Statute, giving to him an Election to recover either by Action of Debt, or Distress. Fourthly, The Principal Point was, That although he was *ipso facto* deprived by the Statute for not declaring his Assent within the Two Months after his first Nomination and Placing; yet the Statute did not disable him to have a new Nomination, as is in the Case of the Statute of Simony; and he continuing always after in Possession, and Performance of his Office, by Permission and Allowance of the Defendant, and Approbation of the Dean, till the 5th of July, 32. it amounts to a new Nomination; and for

that and his Declaration of his Assent within Two Months after the 5th of July, 32. he is Curate within the Statute, and enabled to bring the Action; and Judgment was given for him by the whole Court. *Vide* 3 Lev. 78, 82, 83.

(49) Defendant pleads that the Plaintiff was a Bankrupt, and that he paid the Money to the Assignees of the Commissioners.

¶ **Q**uibus lectis & auditis idem Def. dicit quod predictus Quer' (Action non) Quia dicit quod Articuli predicti in Conditione predicti, &c. (recitand les Articles) put p articulos predicti int' alia plenius liquet & apparet Et quoad predictum 22 l. in Articulis predicti mencionat' fore solvend p ipsum H. pstat R. ad finem predicti Terminii sex annorum idem H. ulterius dicit quod post confederationem script' Obl' predicti & Articuli predicti & ante predictum finem expirationem predicti Terminii sex annorum scilicet 17 die Julii Anno Regni predicti nup Dni Regis 16 apud Civit' E. predicti predictus R. indebitat' fuisset cuidam M. B. ac diversis al' psonis Creditoribus predicti R. (existentibus subdit' nat' infra hoc regnum Angl') in diversis separabilibus denat' summis in toto se attingend ad Mille libr' legalis monete Anglie p plog R. sic indebitat' existentem idem R. postea scilicet predictum 17 die Julii Anno Regni dicti Dni Regis nunc 16 supradicto eisdem

dem Creditoribus de debis suis mie satisfacti  
 existend apud Civit' E. p'dict' pro debito arrestat'  
 fuit & sup arrestat' p'd' ad Prison dicti nup Re-  
 gis apud Civit' E. p'd' ductus fuisset & ibidem  
 in Prisona p spacium duorum mensium tunc  
 p' sequen & amplius remanuit ad intentionem  
 defraudand Creditores suos p'dict' de debis  
 suis p'dict' p ipsum sic ut p'fertur debet' Et  
 supinde postea scite primo die Octobr' An-  
 no 16 supradicto apud Civit' E. p'dict' idem  
 R. devenit Decoctoz Anglice became a  
 Bankrupt infra Statut' concernend Decoctos  
 res nup edit' & p'bis' Quodqz p'dict' R. p-  
 dicto tempore quo ut p'fertur devenit Des-  
 coctoz fuit Subditus p'dict' nup Dñi Regis  
 natus infra hoc regnum Angl' viz. apud Ci-  
 vit' E. p'dict' & adtunc & ihm p multos an-  
 nos tunc ult' elapsa querebat victum suum p  
 viam emendi & merchandizandi Et ulterius  
 idem H. dic' quod supinde postea scite 17 die  
 Febr' Anno 16. supradicto apud Westm in  
 Com' Midos ad petitionem p'dict' M. & Cres-  
 ditor' p'dict' R. E. D. Nil' adtunc Dño Cu-  
 stob magni Sigilli Angl' ante tunc exhibit' &  
 fact' p remediis suis vers' p'dict' R. tunc ex-  
 istend decoctozem Anglice a Bankrupt in hac  
 parte habend p'fat' M. & ceteris Creditori-  
 bus p'dict' R. de debis suis p'dict' tunc mie  
 solut' seu satisfacti existend Quedam Commis-  
 sio p'dict' nup Domini Regis sup Stat' con-  
 tra Decoctozes Anglice Bankrupts edit' p'bis'  
 sub magno sigillo dicti nup Dñi Regis Angl'  
 sigillat' gerend dat' apud Westm p'dict' p'ra-  
 dicto 17 die Febr' Anno 16. supradicto dilec-  
 tis & fidel' dicti nup Dñi Regis J. R. R.



## Bar al Covenant &amp; Condition.

S. &c. direct' fuit Per quam quidem Commis-  
 sion' dictus nup Dñus Rex ppendens debam  
 execucon' tam Statut' tangend' Ordines pro  
 Decretoribus Anglice Bankrupts in Parli-  
 ament' incept' & tent' apud Westm' pdict'  
 secundo die Aprilis Anno regni pcharissimi  
 sororis pdict' nup Dñi Regis Dñe Eliz. nup  
 Regin' Angl' 13. edit' & p'bis' quam etiam  
 Stat' edit' in Parlamento incept' & tent'  
 apud Westm' pdict' 19 die Martii Anno  
 regni Dñi Jacobi nup Regis Angl' primo  
 Scocie 37. intitulat' Ad' p' melior' releva-  
 mine creditorum vers' tales qui debent Des-  
 cretores dedit plenam potestatem & auctoritat'  
 eisdem quinque Commissionar' quatuor vel  
 tribus eorum quorum pdict' J. R. vel pdict'  
 W. R. unus esse voluit juxta eadem Stas-  
 tuta & utrumq' eorum non solum concers-  
 nend' pdict' Decretorem corpus ejus terras  
 liberas Anglice Freehold & customar' Anglice  
 Copyhold bona veba & al' quecunque Sed es-  
 tiam concernend' omnes al' psonas que p con-  
 celament' clam vel alit' offenderent tangend'  
 p'p'miss' vel aliquam partem inde contra in-  
 vencon' & p'posit' pdict' Statut' vel alterius eo-  
 rum ad faciend' & exequend' omnes & quasli-  
 bet rem & res quascunq' tam erga & p' sa-  
 tisfactione & solucon' pdict' Creditorum quam  
 erga & p' omnibus al' intencionib' & p'posit'  
 secundum ordinac'on' & p'vision' eorundem  
 Statut' vel alterius eor' Per quam Com-  
 mission' dictus nup Dominus Rex voluit &  
 dedit in mandat' pdict' Commissionar' qua-  
 tuor vel tribus eorum quorum pdict' J.  
 R. & W. R. un' esse voluit ad pcedend' ad  
 execucon'

execution & accomplment' p'dict' Commissionis secundum veram intentionem & propositum eorundem Statutor' & alterius eorum cum omni diligencia & effectu secundum specialem fiduciam dicti nup' Dñi Regis in eadem Commissionem reposit' put p eandem Commissionem plenius apparet Virtute cuius quidem Commissionis & vigore Statutor' p'dict', p'dict' J. R. &c. tres Commissionar' p'dict' postea scilicet nono die Novembr' Anno regni nup' Regis Caroli 19 apud Civit' Eborac' p'dict' in debita forma adjudicaver' & declaraver' ipsum R. esse Decedentem infra Statut' p'dict' Et ad tunc & ibidem concesser' & assignaver' & posuer' p'dict' summam 20 l. in Articulis p'dict' superius mencionat' fore solvend' p'sat' R. p p'dict' H. int' alia p'sat' M. tunc und' Creditorum p'dict' R. existent' secundum formam Statuti p'dict' Et idem H. ulterius dicit quod ipse ad finem p'dict' termini scilicet 25 die Martii Anno Dñi 1645. apud Civit' E. p'dict' solvit p'sat' M. p'dict' summam 20 l. in Articulis p'dict' mencionat' Et idem H. ulterius dicit quod ipse idem H. omnes al' Cobention' & Concessionem in Articulis p'dict' mencionat' ex parte ipsius H. p'formand' & custodiend' a tempore confectio' scripti' Obl' & Articuloz' p'dict' hucusque bene & fidelic' p'formavit p'implevit & custodivit secundum formam & effectum scripti' Obl' & Articuloz' p'dict' Et hoc &c. Unde, &c.

Sile in Debo, i Lut. 701.



Aliter.

¶ **A** Cō non quia pteſtando quod ipſe non Aſſumpſit ſup ſe modo & forma put p̄dict' Quer' ſupius verſ' eum queritur pteſtando etiam quod idem H. non fuit indebitat' p̄ſat' Quer' in aliqua denar' ſumma ultra 18 l. put p Will' p̄dict' ſupius ſup ponitur Pro p̄ſito idem H. dic' quod p̄dict' Ja. exiſtēd' ſubditus natus hujus Regni, &c. (tali die & Anno) fuit cōmīs Pandorator ac p totum idem temp' apud de in Com' H. emendo & vendendo in Arte ſive Profeſſione Pandorator victum & facultatem ſuam vivendi queſivit Et idem Jac' ſic negocians & victum ſuum querens infra tempus illud apud D. p̄dict' in Com' H. p̄dict' devenit indebitat' quibuſdam J. H. & J. D. & al' Creditozibus ſuis exiſtēd' ſubditis natis hujus Regni Angl' in diverſis denar' ſummis attinēd' in toto ad ſummam 2000 l. legalis, &c. & amplius Quodque idem Jac' ſic inde indebitat' exiſtēd' infra tempus p̄ed' ſciſt' p̄ſimo die Mai' Anno, &c. 13 incepit cuſtodire domum ſuam manconal' apud D. & latitare p timore arreſtationis p debis p ipſum Jac' p̄ſat' J. D. & al' Creditozibus ſuis debic' Et ſic' attunc dedit mandatum ſervien' ſuis negare Creditozibus ſuis ipſum p̄dict' J. eſſe in eadem domo ſua quando fuit intus in eadem ad p̄caſtinand' Debitor' ſuos de veris & juſtis debis ſuis eis p p̄ed' J. adtunc



ad tunc debet & solubile Ac ratione premisso-  
rum idem J. p̄dicto primo die Marti Anno,  
ec. 13. supradicto apud L. p̄dict in Paroch  
& Warda p̄dict de his suis p̄dict tunc mie sa-  
tisfuit existens manifeste devenit & adhuc existit  
Decodor p̄plog J. sic Decodor existens pos-  
tea scilicet 28 die Decob Anno regni, ec. 13.  
supradicto apud M. in Com p̄dict ad petitionem p̄-  
J. H. & J. D. C. Comie C. tunc & adhuc  
Dño Cancellar' Angl' fact' & exhibu' p res-  
mediis suis versus p̄fat J. tunc existens Des-  
codor in hac parte hēd eisdem J. J. & ces-  
teris Creditoribus p̄dict J. de his suis p̄dict  
mie satisfact' Quedam Commissio dicti Dñi  
Regis sup Statut' contra Decodores edit' &  
p̄bis sub magno sigillo dñi Dñi Regis sig-  
gillat' & hic in Cur plat' gerend dat' apud  
Westm p̄dict eisdem die & Anno quibus-  
dam J. P. R. L. R. R. W. ju'd & R. S.  
direct' fuit Per quam quidem Commissionem  
dñus Rex tunc dedit plenam potestas-  
tem & auctoritat', ec. (ut in ap) put p ean-  
dem Commissionem plenius apparet Virtute cu-  
jus quidem Commissionem ac vigore Statut' p̄-  
p̄dict J. ec. tres Commissionar' de Commis-  
sionem p̄dict accepti sup se onere execuconem Commis-  
sionem p̄dict sup maturam deliberacionem inde capē  
p remedio Creditorum p̄dict postea scilicet 10 die  
Novembri Anno regni ec. 14. supradicto apud  
L. p̄dict in Paroch & Warda p̄dict invener  
p̄dict Ja. ante emanacionem Commissionem p̄dict  
devenisse & fuisse Decodorem ad omnia in-  
tencones & pposit' infra pvisionem & intenconem  
Statutorum p̄dict ac diversa de ha & denar sum-  
mas fore tunc debet & p̄tine Statuti p̄dict

Ja. a separal' psonis Et postea scit eisdem die  
 & Anno apud L. pōict in Paroch pōict iidem  
 tres Commissionar' p quādam Indentur' su-  
 am Assignatōis inc' ipsos J. &c. ex una  
 parte & pōict J. H. & J. D. ex altera par-  
 te fact' cūsus alteram partem sigillis pōict J.  
 H. &c. signat' idem H. hic in Cur' pferit cūsus  
 dat' est eisdem die & anno quantum in ip-  
 sis fuit & iustine potuer' assignaber' & trans-  
 posuer' pōict J. H. & J. D. omnia & sin-  
 gula separal' deba & denar' summas particula-  
 rit' & expresse menconat' in quadam Schedu-  
 la sive Inventorio indentat' eidem Indentur'  
 annex' onerabil' & debit' p psonas in dicta  
 Schedul' nominat' vel aliquam eorum tunc  
 debit' pōict Ja. Habend' & tenend' recuperand'  
 recipiend' possidend' & gaudend' omnia & singu-  
 la debita & denar' summas in pōict' Sches-  
 dul' exprels' ac omnia al' deba p eand' In-  
 dentur' assignat' & quamlibet partem inde ip-  
 sis dictis J. H. & J. D. Exec Admōd' & Assign'  
 suis & cuilibet eorum ut eorum proprium  
 Statum imperpetuum In qua quidem Sches-  
 dula inc' al' continetur quod 18 l. fuer' de-  
 bit' & pertinen' Statuti pōict Ja. per ipsum  
 H. p'out p Indentur' & Schedul' pōict hic  
 etiam in Cur' plac' plenius apparet Quorū  
 p'extu idem H. onerabilis debent & adhuc  
 existit ad solvend' p'fat J. H. & J. D. omnia  
 debita & denar' summas p ipsum H. debit'  
 Statuti pōict' Jac Et hoc &c. Unde &c.

(50) Upon a Condition to perform Articles for Payment of Ten Pounds *per Annum* to the Plaintiff's Wife; so long as the Plaintiff's Wife and the Defendant *cohabitarent*.

Bar, That the Plaintiff and Defendant at the Time of the Articles, or any Time after, *minime cohabitaverunt*.

¶ **E**T p̄dict L. p̄ J. D. Actorū suum  
venit & defendit eum & injur' quando,  
&c. Et per' auditum scripti p̄dict Et ei le-  
gitur, &c. per' etiam auditum Conditionē es-  
sujdem scripti Et ei legitur in hec verba,  
The Condition, &c. Quibus lectis & auditis  
(Actorū non) &c. and sets forth the Arti-  
cles, reciting that the Plaintiff D. had an e-  
quitable Title to the Advowson of E. and  
shews how the Defendant thereby covenanted  
with the Plaintiff D. that the Defendant  
would pay the Plaintiff Ten Pounds by the  
Year, so long as the Defendant and the  
Plaintiff *insimul cohabitarent*, *Anglice*, live  
together; and if one of them should die, then  
the Payment to cease. And that the Plaintiff  
D. thereby covenanted with the Defendant  
to join with the Persons who had the Estate  
in Law of the Advowson, to make him the  
Defendant a good Title, &c. *Prout p̄ Ar-*  
*ticulos*



iculos illi plenius liquet & apparet Et idem T. C. in facto die quod tempore confectōis scripti Obl' vel Articuly p̄dicti seu ad ali- quod tempus post confectōis scripti Obl' p̄dicti & Articuly p̄dicti Idem T. C. & dic' Do- rothea minime insimul cohabitaver' vocat' li- ved together Et hoc parat' est verificare Un- de pet' judic' si p̄dicti W. & D. Accōd su- am p̄dict' vers' eum habere debeant, &c. Quer' Demurr'. And after two Arguments Judg- ment was given for the Plaintiff; for the Court was of Opinion, That the Words in the Articles (shall live together) should be taken and intended to be, to live together in Time, and not in Place; and by Consequence, that the Yearly Sum of Ten Pounds was payable du- ring the Joint-Lives of the Plaintiff Dorothy and the Defendant. See *Lut.* 555, 557.

(51) Debt for Rent of Four Rooms, upon a Lease Parol. ——— *Bar* as to Part by *Nil debet*, and as to Residue, That the Plaintiff demised Five Rooms, and that he had entred into the Fifth Room, &c.

ff. **E**T modo ad hunc diem (&c.) Et idem S. defend' vim & injur' quando, &c. Et quoad 4 l. 10. s. parcel' novem libr' p̄dict' de reddit' p̄dict' p̄ dimis' unius anni finit' ad Fest' Annunc' bte Marie Virginis Anno Dñi 1666. supradict' idem S. die quod ipse non debet p̄fat' J. S. easdem 4 l. 10 s. seu al- liquem inde denar' modo & forma prout p̄dict'

*Bar* by En-  
try and Ex-  
pulsion.

Pdict J. S. superius verſ eum narras  
 vit Et de hoc poſt ſe ſup P'iam Et Pdict  
 J. inde ſilic' &c. Et quoad 4 l. 10 s. reſiſ  
 Pdict 9 l. de reddi' Pdict p dimiſ unius an-  
 ni finit' ad Feſtum Scti Mich' Archi Anno  
 Dñi 1666. ſupradicto idem S. dic' quod  
 Pdict J. S. (Accon non, &c.) Quia dic' quod  
 Pdict J. predicto primo die Jan' Anno Dñi  
 1663. ſupradicto apud A. Pdict in Paroch' &  
 Warda Pdict dimiſit conceſſit & ad firmam  
 tradidit pſat S. non ſolum Pdict tres Ca-  
 meras & unum Cellar' verum etiam un' al'  
 Cameram vocat' a Dining-Room exiſtend al'  
 parcell' Domus manconat' ipſius J. S. Pdict  
 habend' & tenend pſat' tres Cameras primo  
 menconat' & Pdict un' Cellar' pſat' S. & al-  
 ſign' ſuis a predicto Feſto Nativitat'is Dñi  
 tunc ulc' pterit' ulque finem & terminum us-  
 nius integri anni extunc prox' ſequend & ples-  
 nar' complend & finend & ſic de anno in  
 annum quamdiu ambabus partibus Pdict  
 placeret prout Pdict J. S. ſupius allegavit  
 ac hend' & occupand al' Cameram vocat' the  
 Dining-Room eidem S. a Pdict Feſto Nata-  
 lis Dñi tunc ulc' pterit' ulqz finem & ter-  
 min' unius integri anni extunc prox' ſequend  
 & plenar' complend & finiend & ſic de anno  
 in annum quamdiu ambabus partibus Pdict  
 placeret (tali tempore quo quidem R. III.  
 Ar' foret Reſidens infra Civit' London tan-  
 tummodo except') reddend & ſolvend proin-  
 de annuatim eidem J. & aſſign' ſuis Pdict  
 annual' reddit' novem Libz' ad Pdict quatu-  
 or maxime uſual' Feſt' ſive terminos Anni  
 viz. Feſt' (&c.) p equas & equal' porcones  
 virtute

virtute cuius quidem Dimissionem idem S. tam in p̄dict tres Cameras & Cellar' p̄dict quam in al' Cameram vocat' the Dining-Room intravit & fuit inde possessionat' ipsoque sic inde possess' existēd idem S. ulterius die quod p̄dict J. S. postea & ante Festum S̄ci Jō Bapt' Anno Dom 1666. suprad̄co scilicet 23 die Junii Anno ult' suprad̄co in p̄d Cameram vocat' the Dining-Room sup possessionem ipsius S. inde intravit ac ipsum S. a possessione sua inde expulit & amovit ac ipsum S. semper abinde usque ad Cras' p̄d Fest' S̄ci Michis Archi Anno ult' suprad̄co a possessione sua inde exheredavit Ac idem S. ulterius die quod p̄d R. W. p totum idem tempus fuit residens extra Civit' L. p̄d viz. apud S. in Comd C. ac p idem tempus seu p aliquam partem inde non fuit residens infra Civit' L. p̄d Et hoc parat' est verificare Unde per' judic si p̄d J. Actionem suam p̄d inde vers' eum here seu manutenere debeat, &c.

Quer' moxatur in Lege Et pro causa Co quod placitum p̄d est incertum & non respond' ad Parr', &c. Def. junct' in Morat' sed quia Cur' &c. Et quoad p̄d 4 l. 10 s. parcell' Debeti p̄d p Parr' p̄d supius petit' Unde erit' p̄d int' partes p̄d superius junct' existit p P̄nam criand' p̄d J. S. fatetur se ulterius nolle prosequi vers' p̄d S. S. pro p̄d 4 l. & 10 s. Ideo quoad 4 l. 10 s. ill' parcell', &c. p̄d S. S. sic inde quietus Et eat inde sine die, &c.

Nolle pros'  
quoad Exit'  
junct'.

Upon



Upon the Argument of this Demurrer it was said, That the Defendant in this Plea ought to have traversed the Demise alledged by the Plaintiff by an *Absque hoc* that the Plaintiff had demised only the three Chambers and the Cellar, as he had alledged in his Count; and for Default thereof it was said the Plea was ill; and the Case of *Woodland and Mantell en Pl. Com. fo 95.* was cited to prove it: Also 32. *H. 6. 3. b.* and 35 *H. 6. 38.* and 1 *Leon. 43. Kimpton vers' Bellamy*, where in a Replevin the Plaintiff, in his Bar to the Avowry, claimed Common for all his Cattle *levant & couchant, &c.* in Six Acres of Land, and that the Defendant in his Replication shewed that the Plaintiff had Common in Forty Acres of Land; and that the Plaintiff had purchased Two Acres of the Land, and so had extinguished his Common; he ought to traverse the Common of the Plaintiff only in Six Acres, and so is *Newman and Moor's Case, Hob. 80, 81.* But it was argued for the Defendant that his Plea was good, and that no Traverse ought to be in his Plea, but that the Traverse ought to come on the Part of the Plaintiff in his Replication, viz. *Quod præd' quer' dimisit præd' tres Cameras & unum Cellar' tantum come il ad suppose Absque hoc qd' dimisit præd' al' Cameram vocat' le Dining-Room, modo & forma prout Def. in placito suo allegavit.* And the Case, *Dyer 30. a.* was cited, and that the Rule of Pleading is to traverse the Surplusage and not the *tantum.* So *Dyer 280. b.* Sir *Anthony Cook's Case*, and *Dyer 32. b.* where 'tis said that the Traverse ought to come on the

the Part of the Plaintiff, *scilicet*, *Absque hoc qd' dimisit præd' Acras* (being the Surplusage) *prout*, &c. and then the Charge of the Jury would be only upon the Surplusage, *scilicet*, Whether the Four Acres were demised or not? And that such manner of Pleading, to make the Traverse come on the Part of the Plaintiff, did not prejudice him at all, but gave him an Advantage; and therefore prayed Judgment for the Defendant. But the Court, and chiefly Justice *Twisden*, held the Plea ill 'for Default of traversing the *tantum*; and said that tho' the Defendant had pleaded an Entry and Suspension by the Plaintiff, yet the Plaintiff cannot traverse, but ought to maintain his Lease as he had alledged in his Declaration, otherwise it would be a Departure in the Plaintiff. And if he traversed the Entry into the said Room called the Dining-Room, which is not supposed by the Plaintiff to be demised, then the Plaintiff falsifies his own Declaration, which may not be. And after that it had been argued, and a Rule *nisi causa* given, and Cause shewn on the Part of the Defendant at another Day, Judgment was given for the Plaintiff. See 1 *Saund.* 203. And the Reporter there adds, *Mes il semble a moy que le laiser del matter a large en le Plea & issint le Traverse a venir del parte le Plaintiff en sa Replication ust estre le plus apt & substantial manner de pleader, Mes le Court fuit d' autor Opinion come est avantdit. Powlett accouncel ove le Plaintiff & Saunders ove le Defendant.*

(52.) Bar, That a Lease made to an Alien shall be void, by Stat. 32 H. 8.

**E**T modo ad hunc diem, (&c.) Et iidem R. & J. defend vim & injur' quando, &c. Et per' auditum Indentur in Parr' p'dict' mentionat' Et eis legitur in hec verba, This Indenture made (&c.) Quibus Teis & auditis iidem R. & J. dic' quod p'dict' R. Actionem suam p'dict' inde vers' eos here seu manutenere non debet Quia dic' quod in Statut' in Parliament' Dñi Henr' nup Regis Angl' oravi apud Westm' Anno Regni sui 32. tenit' edit' (int' al) ordinat' fuit auctoritate ejusdem Parr' Quod omnes Dimissiones alicujus Domus manconal' sive Shope infra hoc Regnū aut aliqua Regis Dominia concess' Anglice made alicui Alienigene Artifici Anglice Artificer aut Opifici Anglice Handicrafts-man extra diā Domini Regis obestantia nat' mie indenizat' existēd Anglice not being a Denizen ab & post Fest' Scti Mich' Archi erunt pr' sequēd pr' post edicōd Ad' p'dict' vacua & nullius effectus forent & iidem R. & J. ultius dic' quod Indentur p'dicta' in Parr' p'dict' menconat' facta' fuit p' p'dict' R. J. Plat' R. L. p'dict' 26 die Novembr' Anno Regni dñi Dñi Regis nunc 15 apud p'dict' Paroch' Scti Martini in Campis in Com' p'dict' Quodq' p'dict' R. L. tempore Dimission' & confectio Indenture in Parr' p'dict' superius mēse fuit Alienigena Anglice a

(Part IV.) N Stranger



## Bar al Covenant &amp; Condition.

Stranger & Artifer extra dia' Domini Regis  
 nunc obeisanciam & mie indenizat' videt' ap-  
 pud Paris in Regno Francie Et sic iidem  
 R. & J. dic' quod Dimiss' p'dict' ac Indentur'  
 p'dict' in Parr' p'dict' menci' eidem R. L. p  
 p'dict' R. sic ut p'feritur fact' virtute Aa' p'dict'  
 vacua & nullius effectus debent Et hoc iidem  
 R. & J. parat' sunt verificare Unde per' judic'  
 si p'dict' R. Actionem suam p'dict' inde vers'  
 eos here seu manutenere debeat, &c. Quer'  
 moratur in Lege Et Def. jung' in morac.

The Action was Debt for Rent against Hus-  
 band and Wife, as Administrators of one R.  
 L.

The Exception upon the Demurrer was,  
 That the Plaintiff had not averred that the  
 Messuage demised was a Mansion-House; for  
 the Act of Parliament intended only to pro-  
 vide that Alien Artificers should not harbour  
 here to have a House or Shop to exercise their  
 Trades publickly, in Prejudice of the King's  
 Subjects exercising the same Trades: But if  
 any Alien Artificers will live here as Gentlemen  
 upon their Estates they may, and may take  
 Leases of Stables, Coach-Houses, or other con-  
 venient Houses for laying up their necessary  
 Goods; and this is not within the Words or In-  
 tention, because it is not within the Mischief of  
 the Act. And so the not averring the Messuage  
 to be a Mansion-House, had made the Plea ill;  
 because before the Statute all Leases to Aliens  
 were good (at least betwixt the Parties) and  
 now the Statute makes no Lease void, but  
 only

only of Shops and Dwelling-Houses; and if it does not appear to be a Mansion-House, then it is not made void by the Statue, and consequently remains as at the Common-Law: And although it be called a Messuage in the Lease, that does not prove that it was a Mansion-House; for in a *Præcipe qd' reddat* one may demand a Stable or Barn by the Name of a Messuage, for there is no other Name appointed in the Register. And in 13 *Aff. Pl. 2.* a Chapel was demanded by the Name of a Messuage, and the Plaintiff recovered, &c. And because it did not appear that the Messuage mentioned in the Lease was a Barn, Stable, Chapel or Dwelling-House, the Plea was allowed to be ill for Incertainty, and Justice *Twisden* and *Windham* were of that Opinion; but Chief Justice *Kelynge* held that a Messuage should be intended a Mansion-House *prima facie*, and that the Plaintiff ought to have replied that it was not a Mansion-House, and so the Point would have come in Question; and Justice *Moreton* *hesitavit*. Also it was objected that no Place was laid where the said *L.* was an Alien Artificer; but to that 'twas answered by the Court, that it should be tried where the Writ was brought: And afterwards the Defendants perceiving that the Judgment of the Court would be against them, they paid the Plaintiff his Rent and Charges, and so Judgment was not given. See 1 *Saund. fo. 5, &c.*

(5) *Bars* concerning Repairs,  
and other Covenants in In-  
dentures.

(53) ff. **E**t p̄dict Def. p̄ J. B. Attor̄n  
suum ven̄ & defens̄ vim & injur̄  
quando, &c. Et dic̄ quod p̄dict Quer̄ (Action̄  
non) quia dic̄ quod ipsi a tempore confectiōn̄  
Indentur p̄dict hucusq̄ bene & sufficient̄ res-  
paraver̄ & p̄fecer̄ p̄dict Domum man̄conalem  
& at p̄missa sup̄ius dimiss̄ secundū for-  
mam & effectum p̄dict Indentur p̄dict Et de  
hoc p̄vid̄ se sup̄ p̄riam Et p̄dict quer̄ filit̄  
Ideo p̄cept̄ est Uic̄ quod venire fac̄ &c.

(54) ff. **A**ccōn̄ non quia dic̄ quod ipse  
omnes Conven̄cones p̄dict ex  
parte sua tenend̄ apud M. p̄dict secundum  
formam & effectum Indentur p̄dict p̄implebit  
Et hoc &c.

p̄cludi non debet, quia p̄testand̄ quod  
p̄dict Def. null̄ Conven̄cōn̄ p̄dict ex parte  
sua p̄implebit p̄ p̄lito dic̄ quod ipse Def.  
quandam Aulam p̄dict p̄ defectu repa-  
racōn̄ ejusdem ruinosam ad finem termin̄  
p̄dict dimisit Et hoc, &c. Unde, &c.

Et p̄dict Def. dic̄ quod ipse p̄dict Aulam  
ruinos̄ ad finem termini p̄dict non dimisit  
put̄ p̄dict Quer̄ sup̄ius allegavit Et de ho-  
p̄vid̄ se sup̄ p̄riam Et p̄dict Def. filit̄ Ideo  
&c.

(55) Noi



(55) Non Dimisit al part & Demurrer al part.

**E**t modo, &c. Et idem C. G. defendit vim & insur quando, &c. Et dicit quod p̄dict Decanus & Capitulum, Actionem non, Quia quoad fractionem Conveniendi p̄dict quoad defectum reparacionem Cancelli p̄dict superius assignum idem C. G. dicit quod p̄dict Decanus & Capitulum non dimiserunt p̄stat G. H. Cancelli iam p̄dict modo & forma put p̄dict Decanus & Capitulum p̄ Narr suam p̄dict superius inde allegaverunt Et de hoc ponunt se super p̄ziam Et p̄dict Decanus & Capitulum inde stetit. Et quoad fractionem Conveniendi p̄dict quoad defectum reparacionem horrei p̄dict assignum idem C. G. dicit quod Narr p̄dict Decanus & Capituli p̄dict in ea parte materiag in eadem content minus sufficiendum in Lege existit &c. And so demurs generally.

Et p̄dict Decanus & Capitulum dicit quod ipsi se p̄cludi non, quia dicit quoad p̄dict fractionem Conveniendi p̄dict quoad p̄dict defectum reparacionem horrei p̄dict superius assignum iidem D. & C. dicunt quod Narr p̄dict in ea parte materiag in eadem contentum bonum & sufficiendum in Lege existit (&c. and so join in Demurrer) Sed quia Cur &c. Et quoad tam triandum Exit p̄dict &c. quam ad inquirendum &c. huius inde Jur &c.

Upon this Action of Covenant, the Plaintiffs declare in this manner, *Decanus & Capitulum Ecclesie Cathedralis Sancte & individue Trinitatis Eborac' queruntur de Christophoro Guise Barr' in Custod' Barr' &c. de p'feto Convention' fract'*, and sets forth a Demise to G. H. of the Rectory and Parsonage of B. for Sixty Years, to commence *in futuro*, and H. covenants to repair, &c. That the first Term ended, G. H. entred and was possessed, *Cujus quidem Georgii statum & interesse de & in Premiss' quidam G. G. nup' habuit p' Assignmentem & fuit inde possess'*. That he afterwards made his Will, and the Defendant his Executor, who after his Death entred and was possessed; and then assigns a Breach, in Decay of the Chancel, and a great Barn; and that neither the Testator in his Life, nor the Defendant his Executor, after his Death, had repaired them, &c. To this Declaration the Defendant pleads and demurs as above; and upon the Trial the Jury found a Verdict for the Plaintiff, 300 *l.* Damages upon the Issue, and 200 *l.* Damages upon the Demurrer upon the Breach of not repairing the Barn, if Judgment should be given thereon for the Plaintiffs.

And now upon the Demurrer it was objected for the Defendant, That the Plaintiffs had mistook their Action; for they had sued the Defendant as in his own Right, when as it appears of their own shewing, that they ought to have sued him as an Executor only, for that the Defendant is not chargeable here for Breach of Covenant

Covenant, if so be he had not Assets of the Testator's in his Hands; and *Hob. Rep.* 188. and *Cro. Jac.* 647, 671. were cited. By which it appears that Judgment ought to be *de bonis Testatoris* in an Action of Covenant, although the Breach be for the proper Default of the Executors, and so it ought to be in this Case; but here the Defendant is sued in his own Right, and not named Executor as he ought, 30 *H. 6.* 5. And such Exception comes as well to the Verdict as to the Demurrer in this Case; and so was the Opinion of the Court. The Plaintiff's Counsel said, that if it was so upon the Roll, he would pray Leave to discontinue, and the Roll was read, and it was so; whereupon he prayed Time to advise, and afterwards the Parties agreed, and no Judgment was entred. *Saunders pur le Def.* See 1 *Saun.* 108. and 112. where the Reporter remarks, That the Declaration being by Bill seemed to him to be good enough: For upon the whole Matter the Plaintiff had declared against the Defendant as Executor, although in the Beginning he is not so named, which is but only Form; and that the Plaintiffs might well enough have had Judgment for the Damages *de bonis Testatoris* upon this Declaration, but that this was not moved. Also that there was another Exception to the Declaration, *viz.* That a *Que estate* cannot be pleaded upon a Term, as by *Cro. 25. El. 22.*



(56) That the Defendant was ready to repair, but that the Plaintiff did not deliver the Timber upon Notice, &c. (principal Timber being excepted out of the Defendant's Covenant to repair).

**E**T p̄dict R. p̄ J. W. Attorid suum veni  
 & def. vim & injur quando, &c. Et  
 dic quod p̄dict T. Actionem suam p̄dict vers'  
 eum here non debet quia p̄testando quod p̄dict  
 duo hozrea in Narracōne mencuat' primo  
 die Jan' Anno Regni victi Dñi Regis nunc  
 secundo non fuer' ruinosa & in piculo deciden-  
 di p̄pter defect' necessarij reparacōis ipsius  
 R. regul' Anglice Thatching murendi Anglice  
 Walling, ostiorum Angl' Doors, Arctectat' Angl'  
 Studding, pariet' arectat' Angl' Flagging, & tegu-  
 lacōis Anglice Slating, prout idem T. supi-  
 us allegavit. Pro placito idem R. dic quod  
 ipse primo die Jan' Anno Regni Domini  
 Regis nunc secund' parat' fuit ad sua p̄p-  
 onera & custag' reparare p̄dict duo hozrea cum  
 omni tali reparat' qual' tunc necessar' fuit  
 principal' Maheremio tantummodo except'. Et  
 idem R. ulterius dic quod primo die Jan'  
 Anno Regni Domini Regis nunc secund' su-  
 pradicto due trabes principalis Maheremii  
 triginta pedibus longe uno pede laze & uno  
 pede crasse necessar' erant ad reparand' & su-  
 stentand' p̄dict duo hozrea & inde idem T.  
 adiunc apud B. B. in Comd p̄dict noticiam  
 habuit,

habuit, præ tamen T. tales duos trabes præ  
 fat R. non adhuc delibavit, sed omnino licet  
 ad hoc faciendū sepius requisit' fuit delibare  
 recusabit. Et hoc parat' est verificare Unde  
 per' judicium si prædict T. Actionem suam præ  
 dict vers' eum here debeat, &c. Quer' Des  
 murr' Et Def. jung' in morat', See 1 Lut.  
 316.

By the Opinion of the Court the Plaintiff  
 had Judgment, for that the Defendant had  
 not sufficiently answered to the Breaches as-  
 signed; for the Plaintiff had assigned Defaults  
 of Reparation of Things that were ruinous,  
 and in Decay, in Thatching, Walling, &c.  
 but not for Default of principal Timber; and  
 also 'tis apparent, that for the Reparation of  
 any Things in Decay and out of Repair, prin-  
 cipal Timber was not necessary; and yet if prin-  
 cipal Timber had been requisite for Repairs,  
 no Default in the Plaintiff is alledged by the  
 Defendant in his *Bar*, that such Timber was  
 not had, for he only alledges that he had gi-  
 ven Notice that such Timber was requisite,  
 &c. and that the Plaintiff had not delivered  
 it to the Defendant; whereas it appears by  
 the Covenants, that the Plaintiff was only to  
 provide it ready for Carriage, and that also is  
 to no Purpose; for it is admitted by Implica-  
 tion that the Plaintiff had not provided prin-  
 cipal Timber, for that by the Breach assigned  
 by him such Timber was not requisite, and  
 so the Plaintiff could not have replied, that  
 he had provided, or that he had delivered  
 such

such Timber, for that had been a Departure from his Narr.

(57) Debt upon Bond to perform Covenants in an Indenture of Lease of Mills, wherein the Lessor covenants to provide, and allow the Defendant several Things by Name, and also master Timber for Repairs; and the Defendant covenants sufficiently to repair, and so leave them at the End of the Term, &c.

Defendant pleads Performance of Covenants generally. *Repl'*. That the Defendant had permitted the Mills to be in Decay, and sets forth the particulars. *Rejoinder ut sequitur*.

*Rejoinder,*  
That he had requested the Plaintiff to allow him master Timber secund' &c. and that he had refused to do it.

**N** **E** **T** **P**oict **R**. ptestando quod molendina Poict Poico 29 die Sept' Anno 36 supradicto fuer' in tam bono Statu & Conditione quoad reparacionem eorundem quam fuer' tempore sigillacionis & deliberacionis Indentur' Poict' secundum formam & effectum ejusdem Indentur' p placito die quod ante eundem 29 diem Sept' Anno 36 supradicto idem R. apud W. Poict requisivit Poict C. providere & ei p'bere maeremium principale Anglice matas fusoies Anglice Spindles, ereficia Anglice Brasses, neces' p meliori reparacione Molend' Poict secund' formam & effectum d'ce Indentur' tur



tur quod facere deus C. adtunc & ibidem per-  
nitus recusabit Et hoc parat' est verificare  
Unde idem R. ut prius per' Indic quod p<sup>r</sup>  
C. ab Actione sua p<sup>r</sup>dict vers' ipsum R. Hen<sup>d</sup>  
Pcludat', &c. Quer' moratur in lege. Et Def.  
jung' in morat'.

Upon the Argument of this Demurrer the  
Court was divided in Opinion, whether the  
Covenants in this Indenture were Reciprocal  
or Conditional; and that they were Recipro-  
cal, these Cases were cited, 3 Leon 219. Bro-  
ca's Case, Co. 7. 10 b. in Ughtred's Case, 1  
Roll. Abr. 414. Lett. T. nu. 5. 416. nu. 15.  
Bragg and Nightingale's Case. 1 Saun. 319. 2  
Saun. 350.

## (6) Concerning Charterparties, &c.

(58) Debt upon a Bond with a Condition  
concerning a Voyage, &c. with a Ship to  
be well and sufficiently Manned, Victualled,  
Tackled and provided for the said premised  
Voyage, &c. Bar, That the Ship was  
well Manned, Victualled and Tackled, but  
in the Voyage was broken and disabled, &c.

**Q**uibus lectis & auditis idem R. dic' q<sup>d</sup>  
p<sup>r</sup>dict C. (Action non) quia dic' quod  
R<sup>e</sup>dis p<sup>r</sup>dict dic' 25 die Martii in Condi-  
cone p<sup>r</sup>dict menconat' iuta fuit apud p<sup>r</sup>dict  
Insulam

Insulam M. existentem in partibus transmarinis videlicet apud C. p̄dict bene & sufficienter cum Navigatozibus munita vocat' Manned cum cibaria & Armament' p̄parat' vocat' Victualled and Tackled p̄ Viagio p̄dict. Et ita munita & p̄parat' infra duas septimanas tunc p̄ sequen p̄cessit in Viagio suo p̄dict Et in Viagio illo postea scilicet 29 die Marti tunc p̄ sequen apud Virginiam p̄dict in partibus transmarinis videlicet apud C. p̄dict appulit, Quodqz Navis ill' non retornabit vel fecit aliquam arrivacionem abinde ad Plymouth p̄dict nec ad aliquod portum seu alibi infra hoc Regnum Angl' hucusque accessit sed p̄ vim venti in navigando in Viagio suo ab Insula M. p̄dicta erga Virginiam p̄dict fracta & totalit' inhabilis ad Viagium illud finiend' & retornand' devenit & facta fuit Et postea scilicet primo die Julii Anno illo apud Virginiam p̄dict Navis ill' totalit' deperdita fuit Et hoc parat' est verificare Unde pet' judic' si p̄dict G. Actionem suam p̄dict inde vers' eum here debeat, &c.

Repl.

Et p̄dict G. dic' quod ipse p̄ aliqua palleget' ab Accione sua p̄dict inde vers' p̄dict R. Hend' p̄cludi non debet, quia dic' quod p̄dict R. scienter & voluntarie permisit navem p̄ced' devenire inhilem ad Viag' p̄dict p̄formand' p̄ defect' necessar' reparacionem inde ea intentione ad decipiend' & defraudand' p̄dict G. de p̄dict Centum Libr' in Conditione p̄dict supius mentionat' scilicet apud C. p̄dict Et hoc parat' est verificare Unde pet' judic' & debum suum p̄dict unacum dampnis suis Accione detentionis debi ill' sibi adjudicari, &c.

Et



Et p̄dict R. ut prius dic' quod Ravis  
p̄dict in Conditione p̄dict superius mentionat'  
p̄ vim venti in navigando in Viagio suo  
p̄dict ab Insula M. p̄dict erga Virgineam  
p̄dict fracta & totalit' inhilis ad Viagium il-  
lud finiend' & retornand' deveni' & facta fuit  
Et postea scilicet primo die Julii Anno ill'  
apud Virgineam p̄dict Ravis ill' totalit' de-  
p̄dita fuit modo & forma prout p̄dict R. su-  
pius placitando allegabit, scilicet apud C. p̄-  
dict. Absque hoc quod ipse p̄dict R. p̄misit  
Ravem p̄dict devenire inhilis ad Viag' p̄dict  
p̄formand' pro defectu necessar' reparatione inde  
modo & forma prout p̄dict C. supius replicando  
allegabit Et hoc parat' est verificare unde per  
judic' si p̄dict C. Actione suam p̄dict inde  
vers' eum here debeat, &c. Quer' moxatur  
Et Def. jung' in moxat'.

Upon the Argument of the Demurrer the  
Plaintiff's Counsel did not insist to maintain  
the Replication, but took an Exception to the  
Plea in Bar, viz. That it was not therein al-  
leged, That the Ship was sufficiently provi-  
ded for, which is a principal Part of the Con-  
dition ; for the Plea only says, That the Ship  
was well Manned, Victualled and Tackled,  
but nothing as to any Provision made for the  
Ship. To which the Defendant's Counsel  
answered, That it was comprehended within  
the Words Mann'd, Victualled and Tackled.  
But the Court was of a contrary Opinion,  
because that in the Words (provided for)  
the necessary Reparation of the Ship was  
com-



comprehended. Then it was insisted for the Defendant, That as the Condition is penned, the Defendant was not to pay the 125 *l.* till after the Arrival of the Ship at some Port in *England*. But the Court said, That the Intent of the Condition was, that if the Ship should not arrive by reason of any Default in the Defendant; yet he was to pay the 125 *l.* And it is strongly to be intended, that there was a Default in the Defendant, for that he had not answered to a material Part in the Condition, *viz.* the Provision for the Ship; and the rather for that nothing material 'is said in the other Part of the Plea, to make it appear that no Default was in him; for it may be true that the Ship was disabled to perform the Voyage by force of Wind, but that might be by reason that the Ship was not well provided for, and so by that Means was feeble to resist the Wind, and therefore the Plaintiff had Judgment by the Opinion of the whole Court.

Mr. Justice *Powel* said in this Case, That the Defendant ought to have pleaded according to the Words of the Condition; but the Chief Justice said, That he ought to plead according to the material Words of the Condition; for if there be synonymous Words in the Condition, 'tis sufficient to use one of them, but yet in this Case the Plaintiff had Judgment for not answering to one of the Words of the Condition. See 1 *Lut.* 698. and 700. where the Reporter also notes, That in the Plea in this Case 'tis said, that the Ship was *tuta apud præd' Insulam M. existen' in partibus trans-*  

*marinis,*

*marinis*, viz. *apud C. præd'*, which (as it is said by the Court in *Davis* and *Rale's* Case, 2 *Lut.* 950.) is repugnant and absurd, and that in this Case there was not any Necessity for it; for the Obligation being made in *England*, an Issue upon any thing done beyond Sea may be tried where the Bond is alleged to be made, as appears in 1 *Inst.* 261. and other Books. And this Observation the Reporter has made to prevent such further Absurdities for the future.

(59) Upon an Action of Covenant to save harmless from Suits to be commenced before the End of *Michaelmas* Term, and a Breach assigned by a Judgment against the Plaintiff upon a *Scire facias*, certified out of the *Exchequer*.

Bar, That the *Scire facias*, *rei veritate*, issued forth after *Mich.* Term, &c.

fl. **E** præ *T. p. S. D.* Attornd suum ven Bar.  
 & Defend vim & insur quando, &c.  
 Et dic quod præ *H.* Actionem suam præ  
 vers' eum habere non debet quia protestando  
 quod eadem *H.* a tempore confectionis scripti  
 præ ante finem Termi S'ci Michis Anno  
 secundo supradicto non dampnificat' fuit rōne  
 solutionis sue dicte summe 64. l. eide *T.*  
 pro placito tamen idē *T.* dic quod breve  
 vici

dicti Dom Regis de Scire fac e Cur pꝛeð  
 Dom Regis de Scaccario apud Westm in  
 Parr pꝛeð supꝛius mentionat' in rei veritate  
 pꝛimo emanavit vers' eandem R. post finem  
 ejusdem Term scilicet sup 30 diem Novemb  
 Anno Regni dicti Dom Regis nunc secundo  
 Absque hoc quod dict' breve dicti Dom  
 Regis de Scire fac vers' pꝛefat R. e Cur  
 dicti Dom Regis de Scaccario apud Westm  
 pꝛo recuperatione pꝛeð Centum Libꝛar in Parr  
 pꝛeð supꝛius suppoit' emanari actualit' ema-  
 navit ante finem Termini S'ci Michis Anno  
 secundo supꝛadicto pꝛout pꝛeð R. supꝛius vers'  
 eum narrabit. Et hoc parat' est verificare  
 Unde per' judic' si pꝛeð R. Actionem suam  
 pꝛeð vers' eum here debeat, &c.

Repl', And  
 Estoppel.

Et pꝛeð R. dic' quod ipsa p aliqua pꝛeð  
 allegat' ab Actione sua pꝛeð habend' pꝛecludi  
 non debet. Quia dic' quod pꝛeð bre dicti  
 Dom Regis de Scire fac gerit dat' 29 die  
 Novembr' Anno Regni dicti Domini Regis  
 nunc secundo existend' ult' die dicti Termin  
 S'ci Michis pꝛor' post dat' Scripti pꝛeð les-  
 quē pꝛout pꝛ Record' in dicta Cur' dicti  
 Dom Regis de Scaccar' plenius liquet &  
 apparet. Et hoc parat' est verificare Unde  
 per' judic' si pꝛeð T. contra dat' brevis pꝛeð  
 ad dicend' Absque hoc quod dict' breve dict'  
 Dom Regis de Scire fac vers' pꝛefat R.  
 e Cur' dicti Dom Regis de Scaccario apud  
 Westm pꝛo recuperatione dict' Cent' Libꝛ' in  
 Parr' pꝛeð supꝛius supposit' emanari actualit'  
 emanabit ante finem Termin S'ci Michis  
 Anno secundo supꝛadicto pꝛout pꝛeð R. su-  
 pꝛius vers' eum narrabit, admitti debeat. Et  
 unde ex quo pꝛeð T. fractionem Convention'  
 pꝛeð



pres non dedit eadem B. pet' iudic' & dampna sua octon' premis' sibi adjudicari, &c. Def. moxat' in Lege Et quer' jung' in moxat'. See 1 Lut. 329, 332, 333, &c.

Upon the Argument, these Exceptions were taken to the Count in this Case.

1. That it is not said, That the *Capias utl'* issued in the Term-Time; *sed non allocatur*; for *per Cur'*, it being a judicial Writ shall be intended, when there is no Reason to the contrary, for by the Course of the Court it ought to be so. *Latch. 11. Vide 2 Jones 150. 1 Ven. 362.*

2. That it is not said, That the Writing containing the Covenant *sigillo suo fuit sigillat'*; *sed non allocatur*, for *per Cur'*, it is said that thereby the *Def. convenit*, which could not be if it was not a Deed. 4 *Leon. 175.*

3. That it is said, *prout patet per Recordum, Et hoc parat' est verificare*, but (*per Recordum ill'*) is omitted; *sed non allocatur*, for *per Cur'* 'tis well enough without these Words. 1 *Siderf. 429.*

4. But the Question worthy of Consideration was, whether as this Case is, the Defendant shall be admitted to say, That the *Scire facias* was prosecuted out of the Court, at any other Time than from that which it bears Date. And *Baily and Bunning's Case, 1 Sid. 271. and 1 Roll's Abr. 893. F. N. B. 78. b.* were cited, and the Matter was adjourned to be argued the next  
(Part IV.) O Term.

Term. The Reporter adds, That it does not appear by the Court-Book, that it was ever argued afterwards by Counsel on both Parts: But that it appears by the same Book which is in *Trin. 2 W. and M.* Searjeant *Trinder* appeared for the Plaintiff, and that Judgment was given for the Plaintiff *nisi*, &c. And it does not appear That any Cause was shewn to the contrary, but that no Judgment was then entered on the Roll. He further adds, And so by this Judgment it appears (if it was given by reason of an Estoppel in the Case,) That in Judgment of Law a Covenant may be broken, where *revera & in facto* it was not broken, *quod nota*, says he, and for that Matter refers to divers Books mentioned. 1 *Lut.* 334.

(60) Upon a Bond to perform Articles between a Brewer and an Innkeeper, upon a Demise of an Inn.

Defendant pleads Covenants performed generally.

ff. **P**laintiff replies, That he the Plaintiff, the Day of the Date of the Articles, was possessed of the Premises, of a Residue of a Term of 9 Years and 9 Months after the said 29 Day of *September*, That the 28 of *September* he demised the Premises to the Defendant for the whole Term except one Month, and that the Defendant entered by Virtue thereof. Et suit ins  
de

Repl', That the Plaintiff was always ready to serve the said Inn with Strong Beer and Ale, *secundum*, &c. But for Breach says, That the Defendant during the Term bought Beer and Ale of other Brewers, and had sold it in the said Inn.

de adtunc & continue postea hucusque de Pre-  
 miss' pzed possels'. Et ipse idem R. dic' quod  
 ipse pzed R. tempore consecrionis dimissionis pzed  
 hucusque semper parat' fuit ad serviens hos-  
 pitium p'dict' cum bona p'imar' cervisia lupu-  
 lat' & p'imar' Cervisia illupulat' que usualit'  
 vendit' & delib'erat' fuit aliis Hospitatoribus de  
 R. p'dict' tempore consecrionis Articuli p'dict' se-  
 cund' formam & effectum Articuli p'dict' in ea  
 parte ut p'sert' fact' videlt apud R. p'dict'. Sed  
 idem R. ulterius in facto dic' quod post p'dict'  
 29 Diem Sept' Anno 28 supradicto & infra  
 tempus pzed in quo secund' Articuli p'dict' ipse  
 pzed R. fuit ad serviens Hospitium p'dict' cum  
 p'imar' Cervisia lupulat' & p'imar' cervisia il-  
 lupulat' scilicet 29 die Novemb' Anno Regni  
 dicti Domini Regis nunc 29 apud Paroch' p'd'  
 in Warda p'dict' ipse p'dict' D. divers' quan-  
 titat' p'imar' Cerverisie lupulat' & p'imar' Cers-  
 visie illupulat' scilicet quatuor cados p'imar'  
 Cerverisie lupulat' & quatuor cados p'imar' Cers-  
 visie illupulat' de al' Pandorator' eidem R. igo-  
 nor' p' divers' denar' summis emebat & in  
 Hospitium p'dict' accepit & posuit, & p'dict'  
 Cerveis' lupulat' & Cerveis' illupulat' postea  
 scilicet 25 die Novembr' Anno 29 ult' supras-  
 dicto divers' hospitibus ad hospitium ill' ven-  
 niend' p' diversas mensuras in hospicio p'dict'  
 p' lucro inde vendidit, contra formam & effec-  
 tum Articuli & p'dict'. Et hoc parat' est  
 verificare. Unde pet' iudic' & debum suum  
 p'dict' unacum dampnis suis occasione detencionis  
 debi illi sibi adjudicari, &c. Def. mozas in  
 Lege. Et quer' jung' in mozas.



In this Case upon the Argument it was only insisted for the Defendant, That the Plaintiff ought to have alledged, that he had brought to the Inn some Beer or Ale for the Defendant, and that he had refused to accept it. But it was answered, that it would be unreasonable to compel the Plaintiff to bring a Matter so ponderous to the Inn, if he knew not that it would be accepted; and that the Defendant was not obliged to accept of more than he had from time to time Occasion to use in the Inn, and therefore it was reasonable, that the Defendant should from time to time give Notice to the Plaintiff what Quantity his Occasions required, and when it should be brought in, without which it was impossible for the Plaintiff to perform his Covenants with the Defendant; and to prove it these Cases were cited, 1 *Roll's Abr.* 465. *Holder and Taylor's Case*, *Mo.* 72. 1 *Cro.* 571. *Anonymus*, 2 *Cro.* 432. *Henning's Case*, *Hob.* 51. *Holme and Twists Case*, 3 *Cro.* 249. *Brable and Hollywell's Case*, *Roll. Tit. Con. dit'* 469. *Harris and Gibbon's Case*, *vide* 1 *Lut.* 374. and 379. where the Reporter adds, That he heard no more of the principal Case, and that it was not determined upon this Argument, and that no Judgment was entred on the Roll.

# (7) Bar in Covenants, &c. concerning Apprentices and Servants, &c.

(61) Defendant pleads, That his Master delivered him the Goods to Sell, and to render an Account, and that he had accounted, and his Master had accepted his Account.

**N.** **E** modo, &c. Et pōict' R. defend vīm  
 & injur quando, &c. Et dic' quod pō  
 H. L. (Action non, &c.) quia p̄stando quas  
 bona & catalla in Parc' pōict' supius spec'  
 non fuer' tanti valoris quant' pōict' H.  
 supius vers' eum narrabit, pro placito  
 idem R. dic' quod bene & verum est  
 quod pōict' H. fuit possessionar' de bonis &  
 catallis pōict' in narrac' pōict' spec' ut de bo-  
 nis & catallis suis ppz' put pōict' H. p nar-  
 rac' suam pōict' supius suppon' Sed idem  
 R. ulterius dic' quod pōict' H. sic inde pos-  
 sels' existēd' pōict' (t'li die & Anno) supra-  
 dicto apud, &c. deliberabit eidem R. bona &  
 catalla pōict' ad eadem bona & catal' vendēd'  
 & merchand' & ad raçonabil' comput' inde eis-  
 dem H. cum inde requisit' fuisset reddend'  
 cuius pretextu idem R. postea scilicet eisdem  
 die & anno apud L. pōict' in Paroch' &  
 O 3. Warr

Maro p̄dict bona & catalla p̄dict diversis  
 p̄sonis eidem R. ignot' ad tam magnum p̄fi-  
 cium quod potuit p̄ diversis pecunie sum-  
 mis attingendū in toto ad 50l. in pecuniis nu-  
 merat' vendidit. Que est eadem Maſtaco &  
 vendico bonoꝝ & catalloꝝ p̄dict unde idem  
 H. ſup̄ius ſe modo querit'. Et idem R. ul-  
 terius dic' quod ipſe poſtea & ante diem ex-  
 hibicoꝝ ville p̄dict' ſcilicet (i'li die & anno)  
 ſup̄radicto apud A. p̄dict in Paroch' & Maro  
 p̄dict plene computabit cū p̄dict R. p̄ bonis  
 catallis & merchandizis p̄dict ſuperius ſpec' Et  
 ſup̄inde idem R. 50l. p̄ bonis catallis & mer-  
 chandiz' p̄dict p̄ ipſum in forma p̄dict vendit'  
 eidem H. ad uſum ipſius H. p̄p̄' adtunc &  
 ibm ſolbit & deliberabit, quas quidem 50l.  
 idem H. in plenam contentacoꝝ & ſatisfactio-  
 ōi bonoꝝ catalloꝝum & merchand' p̄dict de  
 eodem R. adtunc & ibm recepit acceptabit &  
 habuit. Et hoc, &c. Unde, &c.

(62) The Defendant pleads, That the Plain-  
 tiff left his Service without his License;  
 and that he thereupon refused to receive  
 him again into his Service; and traver-  
 ſes that he put him out of his Service at  
*N. prout in Narr'.*

**E**T p̄dict J. p. T. A. Attoꝝi ſuum vend  
 (et.) Et dic' (Actioꝝ non, &c.) Quia  
 dic' quod diu ante p̄dict tempus quo ſuppo-  
 nit' ipſum G. poſuiſſe ſe Appꝛentic' p̄fat J.  
 necnon eodem tempore quo, &c. necnon conti-



nue extunc hucusque fuit liber homo & Civis  
 L. Pdict viz. Artis sive Mysterii de les Ha-  
 berdashers London, & arte sive mysterio de les  
 Haberdashers infra eandem Civit' & non ali-  
 bi p totum tempus Pdict usus fuit occupavit  
 & exercuit. Quodque idem J. artem sive mys-  
 terium de les Haberdashers A. Pdict tem-  
 pore Pdict positionis ipsius G. Apprentitii  
 pstat J. apud L. viz. in Paroch, &c. utend  
 occupand & exercend idem G. Pdicto tempore  
 quo, &c. tunc & itm posuit se Apprentie  
 eidem J. ad artem ejus discend & erudiend  
 & secum more Apprentic' deserviens p Pdict  
 Term 9 Annoꝝ put Pdict G. supius alle-  
 gavit Et idem J. ulterius dic' quod Pdict  
 G. a Pdict tempore confectionis Indentur' p  
 usque decimum quintum diem Maii Anno  
 Regni Dñi Regis nunc septimo supradicto  
 apud L. Paroch & Ward Pdict eidem J. ut  
 Apprentic' ipsius J. cum eodem J. commora-  
 vit & habitavit quo quidem 15 die Maii  
 Anno 7 supradicto idem G. illicite & absque  
 licenc' & notic' ipsius J. apud L. in Paroch  
 & Warda Pdict decessit & se elongavit & se  
 a Servizio ipsius J. a Pdict 25 die Maii An-  
 no 7 supradicto usque quintum diem Julii  
 tunc pꝛox' sequend absque licenc' ipsius J. ab-  
 sentavit, quo quidem quinto die Julii Anno 7  
 supradicto idem G. apud L. Pdict in Paroch  
 & Warda Pdict obtulit se eidem J. ad eum  
 extunc deservend Usque finem dic' Term 9  
 Annoꝝ Quodque ipse idem J. ipsum G. in  
 servitium suum recipere recusavit put ei be-  
 ne licuit Absque hoc quod ipse idem J. p  
 16 die Maii Anno 7 supradict' apud P. pꝛes  
 O 4 ipsium

## Bar al Covenant & Condition.

ipsum G. & Servitio suo extrapofuit seu expulit p[ro]ut p[re]d G. fupius narrand[um] allegabit. Et hoc, &c. Unde, &c.

Quer[itur] moxat[ur] in Rege & p[ro] causa eo q[uo]d p[ro] J. in Barr sua p[re]d p[ro] Traverfiam fuam deduc[itur] diem & locum extrapofitionis & expulfionis p[ro] G. a Servitio fuo in Eric[us], ubi dies & locus p[ro] p[re]d G. allegat[ur] non funt Traverfabit[ur].

(63) Bar by a Judgment in the Mayor's Court, upon the Custom of the City for an Apprentice (who was not Inrolled in the first Year) to depart from his Master, and tra-verfeth *Quod Apprentic[us] recedebat a Servic[io] quer[itur] ante Judic[em], &c.*

**E**T p[re]d T. C. p[ro] T. J. Actor[um] fu[orum] um ven[ire] (&c. Et dic[itur] quod p[re]dict[us] J. B. (Accord[us] non) quia dic[itur] quod Civitas London eft antiqua Civitas in qua quidem Civic[us] t[em]p[or]e Her[ic]i & a t[em]p[or]e cujus contrar[ia] memoria homin[um] non exiftit Hebat[ur] Confuetudo ufitat[ur] & app[ro]bat[ur]. Quod fi aliquis ponit fe Apprenticium alicui libera homini Civic[us] London p[ro] Termino Septem Anno[rum] vel amplius ad defervien[du]m humoi lib[er]o homini in Arte illa qua idem liber homo utitur & ipfe idem liber homo infra primum Annum Apprentic[us] non pcuraverit eund[em] Apprentic[us] irrofulari aut faltem notari Anglice noted, fecundum antiquam Confuetud[inem] dicte Civic[us] coram Camerar[um] aut Sub-Camarar[um] Civitat[is] London p[ro] t[em]p[or]e exiftent[em] in Camera Civic[us] p[re]d si tuat[ur].



tuat' in Paroch S<sup>c</sup>i Michis Bassishawe in Ward  
 de Bassishawe infra Civi' p<sup>re</sup>ed quod tunc  
 idem App<sup>re</sup>ntic' possit exhibere Peti<sup>ti</sup>on<sup>em</sup> suam  
 M<sup>aj</sup>ori & Ald'ris p<sup>re</sup>dict' Civi' pro tempore  
 existend' in Cur' dicti D<sup>ni</sup> Regis coram eis  
 in Camera Guildhald Civi' London in p<sup>re</sup>ed  
 Paroch S<sup>c</sup>i M. W. in Warda de W. London  
 p<sup>re</sup>ed secundum consuetud' p<sup>re</sup>ed a toto ted  
 teni' p<sup>re</sup>inde petend' Quod ipse diem App<sup>re</sup>nti-  
 cius possit exonerari vers' Mag<sup>is</sup>trum suum de  
 resid' Termin' App<sup>re</sup>ntic' sui tunc ventur' ac  
 quod committat' alicui al' p<sup>ro</sup>bo viro ejusdem  
 Artis qua idem Mag<sup>is</sup>tr' utebat', ad deservien<sup>du</sup>  
 resid' Et sup' Petition<sup>em</sup> ill<sup>am</sup> ut p<sup>re</sup>fer<sup>at</sup>' eribit' ad  
 petitionem humoi App<sup>re</sup>ntic' in Petitione ill<sup>am</sup>  
 p<sup>er</sup> eand' Cur' p<sup>re</sup>cipietur Servien<sup>du</sup> ad Clavam  
 & Minist<sup>ro</sup> Cur' p<sup>re</sup>dict' quod ipse secundum  
 Consuetud' dicte Civi' p<sup>re</sup>monition<sup>em</sup> relinqueret  
 apud Domum man<sup>er</sup>onal' humod def. in Pe-  
 titione ill<sup>am</sup> nominat' de Petitione p<sup>re</sup>dict' vers'  
 eundem def. sic ut p<sup>re</sup>fer<sup>at</sup>' eribit' essend' ad  
 p<sup>re</sup> Cur' dicti D<sup>ni</sup> Regis in Camera G.  
 Civi' p<sup>re</sup>ed coram M<sup>aj</sup>ore & Ald'ris London  
 p<sup>re</sup>ed extunc tenend' ad respond' Quer' in Pe-  
 titione ill<sup>am</sup> de placito in eadem spec'. Et si  
 idem Serviens ad Clavam eidem Cur' cer-  
 tificaret quod ipse p<sup>re</sup>monitionem reliquit a-  
 pud Domum man<sup>er</sup>onal' humod def. de Peti<sup>ti</sup>on<sup>em</sup>  
 p<sup>re</sup>ed ita quod idem def. esset ad d<sup>omi</sup>um p<sup>ro</sup>x'  
 Cur' dicti D<sup>ni</sup> Regis in dicta Camera G.  
 Civi' p<sup>re</sup>ed coram p<sup>re</sup>esat' M<sup>aj</sup>or' & Ald'ris te-  
 nend' Et humod def. ad Cur' ill<sup>am</sup> ac tres al'  
 Cur' dicti D<sup>ni</sup> Regis coram M<sup>aj</sup>ore & Ald'ris  
 Civi' p<sup>re</sup>ed' p<sup>ro</sup> tempore existend' in Camera p<sup>re</sup>ed'.  
 Separatim tunc p<sup>ro</sup>x' tenend' videlicet ad qua-



tuor humod Cur' solemniter erac' non venit  
 sed defalt' fecit Quer' in eadem peticione ad  
 quamlibet earundem Cur' compareri & eadem  
 defalt' sup dict' Def. recozdat' fuit quod tunc  
 ad ult' earundem quatuor Cur' ad petitionem  
 humod Quer' precipere' humod Serbiens ad  
 Clavam ac Ministro Cur' pred' quod ipse  
 Scire facere prefat' Def. essend' ad proz'  
 Cur' dicti Dom' Regis in Camera G.  
 Civi' pred' coram Majoze & Aldermannis  
 Civi' pred' tenend' ad ostendend' si quid pro  
 se heat vel dicere sciat quare humod Appren-  
 tic' penit' non exponeraret' vers' eund' def.  
 Magrum suum de resid' Term' Appzentic'  
 sui adtunc ventur' Et si idem Serbiens ad  
 Clavam eidem Curie adtunc certificaret  
 quod ipse Scire fec' prefat' def. in peti-  
 tione predict' essend' ihm in eadem Cur'  
 Et pred' def. ad Cur' ille solemniter erac'  
 non computit sed defalt' fec' ad petitionem pred'  
 Appzentic' in peticon' p'd p eandem Cur' adjudi-  
 cabit' quod pred' Appzentic' penitus exponeraret'  
 vers' pred' def. Magrum suum de resid' Term'  
 Appzentic' sui pred' tunc ventur' & quod com-  
 mitteret' alicui al' probo homini ejusde' Ar-  
 tis qua idem Magister utebat' ad deserviend'  
 resid' Term' sui pred' Et idem quer' dic'  
 quod Consuetud' pred' & omnes consuetud'  
 Civi' pred' Auctoritat' Parliament' Domi-  
 ni Ric'i nup' Regis Angl' secundi post conques-  
 tum Angl' Anno Regni sui Septimo apud  
 Westm' in Com' Miod' tenet' tunc Majozi  
 & Comitac' dicte Civi' & successoribus suis  
 ratificat' & confirmat' fuer' & idem quer' ulte-  
 rius dic' quod ipse [idem quer' dicto 10 die  
 Aug'

Custom con-  
 firmed.

Aug' Anno Regni dicti Domini Regis nunc  
 24 supradicto apud L. pōict in Paroch &  
 Warda pōict posuit se Apprentice p̄fat Def.  
 p̄ octo Annis more Apprentice describens  
 modo & forma p̄ut Def. p̄ Parr' suam pōict  
 supius allegabit Quodque pōict Def. infra  
 primum Annum Term' pōict Apprentice' p̄  
 quer' non p̄curabit dēni quer' irrotulati nec  
 notari Angl' marked secundum consuetud' p̄  
 dicte Civit' coram Camerar' vel Sub-Came-  
 rar' Civit' pōict p̄ ted existē in Camerar'  
 Civit' pōict in Paroch & Warda pōict ut  
 p̄feret existē Et idem quer' ulterius dic  
 quod supinde postea scilicet 7 die Decob An-  
 no Regni dicti Domini Regis nunc 28 ad Cur'  
 dicti Domini Regis in Camera C. Civit' L.  
 pōict situat' in Paroch S̄ci M. B. in  
 Warda de B. Lond' coram S. S. Mil tunc  
 Mayor' & tunc Aldermannis dic Civit' secun-  
 dum Cons' Civit' pōict a toto ted pōict  
 usitat' & approbat' tunc tent' dictus quer' in  
 p̄p̄r' p̄sona sua veni & tunc exhibuit Mayor' &  
 Aldermannis pōict & Cur' pōict petitionem  
 suam secundum Cons' pōict Civit' pōict vers'  
 dēni Def. Maḡm suum cuius quidem pes-  
 titionis tenor sequit' in hec verb'. Al' hono-  
 rables & tres sages seigniorz les Mayor' & Alder-  
 manns del Cittie de Londres monstre tres  
 humblement L. B. fil' S. B. de, &c. que  
 il lebie plaint envers J. B. Citizen, &c. de  
 ceo que come le 10 jour de Noust en l'aid  
 del Dom 1676, en le Aid del Raigne del  
 nostre Roy Charles le 28 en le Paroch de St.  
 C. de Londres vestre dic suppl' p̄ un Indenture  
 de Apprenticeship la dongz fuit lie de luid  
 Party

Petition in  
 French.



Party & le abandit J. R. del auter Party,  
 (luid part de quel Indenture ovelque le Seal  
 del dit J. enleal vostre dit suppl' icy mon-  
 stre al Court,) mist luy mesme Appzentice,  
 (solongz le Custom de la City abandit) al dit  
 J. R. adonqz esteant un Frank home de la  
 City, & la Societe de les Grocers deins le  
 Cittie usanc pour appzendre le Art que il dit  
 J. R. adonqz usa, & ovelqz luy en mannee  
 de Son Appzentice a demurrer & deservier  
 a le Fest del Annunciation beate Marie la  
 Virge adonqz darreign pals debant le Date  
 del dit Indenture tangz al Fine & Term del  
 huit ans adonqz prochein ensuant & pleinement  
 accomplye, come p le abandit Indenture de  
 Appzenticeship, portant dar' le jour & an as-  
 vandit plus pleinement appeirt, Le quel dit  
 J. le abandit jour de 10 Aoust le Art dund  
 Grocer deins le Cittie Abandit, cest a savoir  
 en le Paroch abandit usa, Nientmiens le  
 dit J. R. ne ad causa vostre dit Suppl' des-  
 stre Enrol devant le Chamberlen de la Cittie  
 en la Chambze de mesme la Cittie  
 deins le pzimer Ann de Son Term de  
 Appzentic' abandit solongz la Custom de la  
 Cittie abandit Et pur ceo il poit please a  
 vos tres honozables & tres sages Seigniozs  
 a vostre sages discreiones a ordainer & ad-  
 judger que vostre dit Suppl' pur le Case as-  
 vandit poit oultrement estre dischARGE en-  
 vers le dit J. R. del residue del abandit Term  
 jumais a venir solongz la Custom de la Cit-  
 tie abandit. Et que il poit estre comissa a  
 un auter sufficient Frankhome de la avandit  
 dit



dit Cite de Londres usant le Art del uid  
 Grocer deins le dit Cite. Et ceo par las  
 moue de dieu & en honoz del Charity.—  
 Et tunc & ihm idem T. C. secundum cons'  
 Civi' p'dict a toto tee' cujus contrar' memos  
 ria hom' non existit usitat' & approbat' ius  
 ven' pleg' ad ps' petitionem suam p'dict viz.  
 Johem Doe & Rich Roe Et tunc & ihm ps'  
 ls suo J. S. Attorn' suum sup quo ad eans  
 dem Cur' coram Wajore & Aldermannis ps'  
 secundum cons' p'dict Civi' ad petitionem  
 p'dict T. p Attorn' suum p'dict faci' pres  
 cept' fuit adtunc & ibidem p eandem Cur'  
 cuidam L. H. Serbiens ad Clavam dictorum  
 Wajoris & Aldor' ac Ministro Cur' p'dict  
 quod ipse secundum cons' dicte Civi' p'moni  
 tionem relinqueret apud Domum mans  
 tional' dicti J. K. de petitione p'dict vers' es  
 undem J. K. sic ut p'fert' exhib' ita quod  
 idem J. K. esset ad pr' Cur' dicti Dom' Res  
 gis in dicta Camera G. p'dict Civi' L. cor  
 ram Wajore & Aldermanis Civi' p'dict  
 8 die dict' mensis Octob' tenens &c. ad res  
 spond' p'fata T. in placito petitionis sue  
 p'dict secundu' cons' Civi' p'dict Et idem  
 dies adtunc & ihm dat' fuit p'fat' T.  
 in placito p'dict. &c. Ad quam quidem  
 Cur' dicti Dom' Regis coram p'fat Wajore  
 & Alderman in p'dict camera G. Civi'  
 p'dict eodem 8 die Octob' tenu' dictus T. p  
 Attorn' suum p'dict comperuit & obtulit se  
 vers' p'fat J. in placito p'dict sup quo p'dict  
 Serbiens ad Clavam ac Minister Cur' p'dict  
 ad eandem Cur' p'dict retorn' & certificavit  
 eisd

eid Cur qđ ipse dicto 8 die Octob Anno Regni  
 dicti Domi Regis nunc 28 supradicto pmo-  
 nitionem reliquit apud Domum manconar  
 dci Jo situal' in Paroch, &c. ita quod is-  
 dem J. esset ad dcam Cur' dicti Domi Reg-  
 is in dicta Camera G. Civit' pdict coram  
 pfat Majore & Aldermanis dicto 8 die Oc-  
 tob Anno 28 pdict tenens &c. Ad quem di-  
 em idem T. p Attozū suū pdict comparu-  
 it & tunc & ibidem obtulit se vers' pfat J.  
 in placito petitionis sue pdict sup quo ad  
 eandem Cur' dicti Domi Regis coram pfat  
 Major' & Aldermanis Civit' pdict in dicta  
 Camera G. Civit' pdict dicto 8 die Octob  
 Anno 28 supradicto tenet pdict J. R. ad pe-  
 titionem pdict Attozū pdict C. solemniter  
 exat' fuit & non comparuit, sed primam tunc  
 & ibidem fec' default que quidem prima default  
 ad tunc & ibm sup eund J. ad eand Cur'  
 recordat' fuit sup quo ad eandem Cur' secund  
 cons' Civit' pdict a toto res' pdict usitat' &  
 approbat' dies dat' fuit pfat J. essens ad pr'  
 Cur' dicti Domi Regis in pdict Camera G.  
 Civit' pdict coram pfat Majore & Alderma-  
 nis 9 die pdict mensis Octob Anno 28 pō  
 tenens ad respond' pfat T. in plito pdict,  
 &c. Et idem dies dat' fuit p Cur' pfat T.  
 in placito pdict, &c. essens ibm, &c. ad quam  
 quidem Cur', &c. (and so the Day is given  
 and Default made by the Defendant until the  
 fourth Default) que quidem quarta default'  
 sup pfat J. adiunc & ibm ad eandem Cur'  
 recordat' fuit post quas quidem quatuor default'  
 sup pfat J. sic ut pferet recordat' ad petico-  
 dci T. p Attozū suū pdict fact' viz. ad  
 Cur'.



Cur dicti Dñi Regis coram p̄fat̄ Majoze  
 & Aldermannis in dicta Camera G. Civi<sup>ti</sup>  
 p̄dict̄ dicto 12 die Octob̄ Anno Regni dicti  
 Dom̄ Reg<sup>i</sup> 28 supradicto tenet̄ p̄cept<sup>u</sup> fuit  
 secundum Consuet<sup>u</sup> Civi<sup>ti</sup> p̄dict̄ & Cur p̄dict̄  
 tunc & ibm p̄ Cur p̄dict̄ p̄fat̄ Serviend<sup>u</sup> ad  
 Clava quod ipse secundum cons<sup>u</sup> Civi<sup>ti</sup> p̄dict̄  
 p̄moneret & certificaret p̄fat̄ J. C. essend<sup>u</sup> in  
 Cur dicti Dñi Regis in Camera G. Civi<sup>ti</sup>  
 p̄dict̄ cora p̄fat̄ Majoze & Aldermannis Civi<sup>ti</sup>  
 p̄dict̄ 16 die dicti Mensis Octob̄ tenend<sup>u</sup>, &c.  
 ad ostend<sup>u</sup> & demonstrand<sup>u</sup> si quid p̄ se heret  
 aut dicere sciret quare p̄dict̄ T. penitus non  
 exoneret<sup>u</sup> vers<sup>u</sup> p̄dict̄ J. B. Mag<sup>is</sup> suu<sup>m</sup> de  
 resis<sup>u</sup> Ternd<sup>u</sup> Apprenticialitatis sue adtunc ven-  
 tur<sup>u</sup> & quid idem Serviens ad Clavam sup<sup>ra</sup>  
 inde faceret eidem Cur tunc certificaret Ad  
 quam quidem Cur dicti Dñi Reg<sup>i</sup> dñs 16  
 die dñi Mensis Octob̄ Anno 28 p̄dict̄ coram  
 p̄fat̄ Majoze & Aldermannis in dicta Camera  
 G. Civi<sup>ti</sup> p̄dict̄ tenet̄ dñs Serviens ad  
 Clavam retorid<sup>u</sup> & certificabit eide<sup>m</sup> Cur Quon  
 ipse vertute p̄cept<sup>u</sup> p̄dict̄ sibi direct<sup>u</sup> 16 die  
 dicti mensis Octob̄ An<sup>no</sup> 28 p̄dict̄ p̄monuit &  
 Scire fec<sup>it</sup> p̄fat̄ J. B. essend<sup>u</sup> ibidem in eadem  
 Cur dicto 16 die dicti Mensis Octob̄ Anno  
 28 p̄dict̄ coram p̄fat̄ Majoze & Aldermannis  
 in dicta Camera G. Civi<sup>ti</sup> p̄dict̄ tenet̄ put ei  
 p̄cept<sup>u</sup> fuit, &c. sup<sup>ra</sup> quo ad eandem Cur  
 dñs T. C. p̄ Attozid<sup>u</sup> suum p̄dict̄ obtulit se  
 vers<sup>u</sup> p̄fat̄ J. B. in placito p̄dict̄, &c. Et  
 p̄dict̄ J. B. adtunc & ibm ad eand<sup>u</sup> Cur  
 ad petid<sup>u</sup> dñi Attozid<sup>u</sup> dict<sup>u</sup> T. solempnit<sup>er</sup>  
 exact<sup>u</sup> fuit & non comparuit, Ideo tunc & ibm  
 secund<sup>u</sup> cons<sup>u</sup> Civi<sup>ti</sup> p̄dict̄ a toto sed<sup>u</sup> ejus  
 comit<sup>u</sup>



conter' memoria hominū non existit usitat' & approbat' considerat' fuit p eandem Cur quod p̄dict' T. C. penitus exoneraret' vers' p̄dict' J. B. Magr'm suum de p̄dict' resid' Term' Apprenticialitatis sue tunc ventur' secundum formam petitionis sue p̄dict' ac cons' Civic' p̄dict' put p Recordū inde plenius liquet & apparet Ratione cuius p̄dict' T. post iudic' p̄dict' dicto 16 die Octob' Ann' 28 p̄d & continue abinde hucusque seipm a Servizio dicti J. elongabat put ei bene licuit, Absq' hoc quod idem T. recedebat seu seipm elongabat a Servizio dicti J. ante iudicium p̄dict' modo & forma put p̄d Quer' supius vers' eum narrabit. Et hoc, (et.) Unde, (et.) Cum hoc qd idem T. verificare vult quod p̄dict' J. B. in narr' p̄dict' nōiat' ac p̄d J. B. in Record' p̄dict' supius similiter nōiat' est una & eadem p̄sona & non al' neque diversa Quodque p̄dict' T. C. in narr' p̄dict' supius similiter nōiat' ac p̄d T. C. in Record' p̄d supius similiter nōiat' est una & eadem p̄sona & non al' neque diversa.

(64) *Bar al Obl'* (concerning a Mariner's Apprentic) by the Statute of 5 *Eliz. c. 5. par. 12.* which requires that the Indentures should be enrolled, &c. And that the Indentures were not enrolled, &c.

**E** T poict T. P. p. T. P. Attorn su-  
um ven & defend vim & injur quans  
do &c. Et petit auditum Scripti poict Et ei  
legitur, &c. per' etiam Auditum condicon es  
jusdem Scripti Et ei legit' in hec verba.  
The Condition, (&c.) which is to perform  
Covenants in an Indenture of Apprenticeship.  
Quibus lectis & auditis, &c. (Action non)  
quia dic quod Indentura poict in Condition  
p'spec fact' fuit die & An supradictis apud  
&c. (And so sets forth the Indenture of Ap-  
prenticeship, by which the Apprentice is  
bound to the Plaintiff for seven Years in the  
Trade of a Mariner, with common Covenants  
in such Cases.) Et p vera p'formatione omni  
& singulor' Covencon' & Agreement' alter  
dictar' partium obligasset seipm alteri firmit'  
p eandem Indenturam put p Indenturam illam  
plenius apparet. Et idem T. alterius die  
quod p quendam actum in Parlamento Dne  
Eliz. nuper Regine Anglie 12 die Jan  
Anno Regni sui quinto apud Westm  
in Com' Midd tent edit & p'vis' (int alia)  
inactitat' fuit quod extunc licitum foret si-  
bus & cuilibet p'prietar' sive p'prietar' Pabi-  
um sive Pabicularum & cuilibet Domumtes  
(Part IV.) P neid

## Bar al Covenant &amp; Condition.

nen Angl Houſholder, uten & exercen ar-  
 tem Angl Trade, Marium Angl of the Seas,  
 p piſcacon vel aliu & cuilibet bombardar ſive  
 bombardar Angl Gunners, coit vocat Duto-  
 nat Ang Outoners, & cuilibet Paupig An-  
 gl Shipwright, ad capiend & cuſtodiend unum  
 vel plur Apprentic ſive Apprenticios inſtruct  
 foze Angl to be brought up in dicta Arte  
 ſive Artibus Angl Trade or Trades, Et quod  
 quilibet tal Apprent ſive Apprenticii eis tent  
 fozent p decd Annis & ſubi Et quilibet Ap-  
 prentic ſic apt exiſtend ultra etat ſeptem  
 annorum tent gubernat & uſitat fozet p eal-  
 dem Conventiones ad omnes intencion ſecund  
 conſuetud Civit Londini, Ita quod dicta  
 Conventio vel Scriptum Apprenticii faci fo-  
 ret p Scriptum indentat & irrotulat in villa  
 ubi idem Apprentic tunc fozet inhitand ſi ſit  
 villa incorporata. Et ſi ſit villa mie incor-  
 porata tunc irrotulat fozet in prima villa incor-  
 porata in habitation cuſtibet tal Apprentic  
 put p Statut illud inc al plenius liquet &  
 apparet, Et idem Iohes ulterius dic quod  
 pō ted confecon Indentur pō pdictus J. P.  
 inhitabat in Paroch de Sneaton in Com pō  
 tunc exiſtend non corporat Quodq villa de  
 Scarbzough ad tunc fuit villa corporat pr  
 adiacend pō vill de Sneaton Quodq pō U.  
 apud W. in Com pō ad tunc & diu antea &  
 continue poſtea huculq uſus fuit & adhuc u-  
 titur Arte Haute Anglice the Trade of a  
 Mariner, viz. apud W. pō Quodq pō J. P.  
 in Indentura pō ſupius menc pdicto tem-  
 pore confecon ejuldem fuit ultra etat ſep-  
 tem annorum ſcilicet novem annorum ac p  
 Indentur ill debent Apprentic ipſius W. in  
 Arte



Arte sua pō juxta formam & effectum Indentur pō sed idem T. ulterius dic quod Indentura ill' nec altera pars inde unquam irrotulat' fuit in pōict villa de Scarbrough nec in aliqua villa incorporat' Anglice Town corporate hujus Regni Angl' p quod Indentur illa vacua existit Et hoc parat' est verificare Unde pet' judic' si pō W. Actionē suam pō inde vers' eum habere debeat, &c.

Et pō W. dic quod ipse p aliqua Palle- Repl' That gat' ab Actionē sua pō habend' pcludi non the Appren- debet, quia prestando quod pō F. in Con- tice had de- ditione pō nōiat' non pformabit seu pimplebit parted from his Service. aliqua in Condition pō & in Indentur pō su- pius spec' ex parte sua pformand' (secund' formam & effectum Condition & Indentur pō) p placito idem W. dic quod pō F. non deservivit pō W. p totid' tempus Apprenticij sui quo ei deservire debuit secund' formam & effectum Condition ill' sed pō F. postea scilicet 10 die Passi Anno Regni dicti Domi Regis nunc primo apud W. pō a servicio pō W. decessit Terminū Apprenticij sui pō non determinat' Et hoc parat' est verificare Unde pet' judic' & debum suum pō unacū dampnis suis occōne detentōis debi illi sibi adjudicari, &c. Def. Demurr'. And the Plain- tiff joins in Demurrer, but this Case was never argued. See 1 Lut. 474, 477.

(65) *Bar* by Apprentice upon the Statute of 5. *Eliz.* That it should not be lawful for any such Master to take an Apprentice (except his own Son) unless the Father or Mother of such an Apprentice had 40 s. *per Annum, &c.*

A. **E**T p̄dict' G. P. filius p̄ A. C. Att' suum veni & defensū vim & insur quando, &c. Et dic' quod p̄dict' R. J. (Ac-  
 cord non) quia p̄testando quod ipse non re-  
 cepit de p̄dict' R. diversas separat' denar' sum-  
 mas monere in toto se attingendū ad sumā  
 1000 l. nec quod ipse aliquas denar' sum' ip-  
 sus R. subdole infidelit' seu inordinate des-  
 vastabit p̄t p̄dict' R. p̄ nare' suam p̄dict' supe-  
 rius suppon' p̄ p̄lito idem G. dic' quod p̄  
 quendam Actum in Parlamento apud Westm'  
 in Con' Midd' 12 die Jan' Anno Dñe E-  
 lizabeth nup' Rñe Anglie quinto tent' edit'  
 inc' alia Provisum & inactitat' fuit authori-  
 tate ejusdem Parliamenti quod non liceat as-  
 sicui p̄sone inhabitandū in aliqua Civitate sive  
 vill' corporat' utenti sive exercenti aliquo  
 Misteriorum sive Artium Anglice Crafts Per-  
 catoris negotiandū Anglice Trafficking p̄ Com-  
 mercium Anglice Traffick sive Artem An-  
 glie Trade in aliquas partes transmarinas  
 Merceri Pannarii Aurifabzi Ferrarii Anglice  
 Ironmonger Segmentarii Anglice Imbroiderer  
 sive Panularii Anglice Clothier qui possint aut  
 poneret



poneret pannum ad consecutionem & benedictionem capere aliquem Apprentice aut servientem fore instructum sive doctum in aliquibus Artium occupationum Artium Anglice Crafts seu Mysteriorum que ipse seu aliquis eorum utuntur sive exercentur nisi talis serviens aut Apprenticius sit filius suus aut alius quod Pater vel Mater talis Apprenticii sive servientem heret ad tempus captionis talis Apprentice sive servientem terras tenita seu alia hereditamenta clari annui valoris quadraginta solidorum de statu hereditario sive libero tenito ad minus fore certificatum sub manibus & sigillis trium Justiciorum ad Pacem Communitatis ubi humodum terrarum tenita seu hereditamenta facient seu facerent Majori Ballivis aut alio Capitali Officiario talis Civitatis sive Villae incorporatæ & fore irrotulatum in Recordis ibidem Et ulterius Inactitatum fuisse auctoritate ejusdem Parliamenti quod omnes Indenturæ Conventuum promissionum aut bargainiarum de & per habente captionem sive custodiam alicujus Apprentice aliter tunc impofterum fieri aut recipiendum quam per Statutum predictum limitatur ordinatur & appunctuatur penitus vacue forent ad omnes intentiones & propositum put per eundem Actum plenius liquet Et idem C. ulterius dicit quod predictum Will. C. in Communi S. in narrat predictum superius speciatum est & tempore consecutionis Indenturæ predictæ fuit antiqua Villa incorporatæ incorporatæ per nomen Ballivorum Burgesis & Comitatus Will. C. Et quod quidam C. F. & C. D. tempore consecutionis ejusdem Indenturæ & captionis Apprentice predictæ fuerunt Ballivi ejusdem Will. C. Et quod predictum R. A. predictum tempore consecutionis Indenturæ predictæ



## Bar al Covenant &amp; Condition.

ac capēonis Appzentic' pōict inhabitat & adhuc inhabitat infra pōict Will G. & adtunc & ibm utebatur & exercebat & adhuc utitur & exercet Artem Pannarii Anglice of a Linnen Draper in eadem Will Et quod ipse isdem G. P. modo Def. fuit filius G. P. de B. P. pōict in narr' pōict superius nominat' & Susanne Ur' ejus & non Filius pōict R. A. Quodque non certificat' fuit sub manibus trium Justic' Pacis Wallivis sive Capital' Officiar' Wille de G. pōict quod Pater vel Mater pōict' G. P. modo Def. fuit terras tēta seu al' hereditament' annui valoris 40 s. prout per Statut' pōict limitatur & ordinatur Sic Indentur' p̄fat' hic in Cur' p̄lat' & in narr' pōict supius spec' necnon omnes Conventiones in eadem Indentur' content' in forma pōict fact' vigore Statuti pōict fuer' & sunt penitus vacue in Lege Et hoc parat' est p̄ficare Unde per' Judic' si pōict R. Accord suam pōict verlus eum habere debeat, &c.

Repl' That Et pōict R. dic' quod ipse (precludi non) the Appren- quia dic' quod p̄dict G. P. Pater Ap-  
tice's Father p̄tenticii tempore confectiō Indentur' p̄d  
was seized of Huit & leisit' fuit in Dūico suo ut de  
10 Acres of feodo de & in decem Acris terre cum p̄  
Land of the tū in D. W. in Comd pōict clari Annui  
Yearly Va- valoris 40 s. ultra reppis' fore certificat' sub  
lue of 40 s. manibus & sigill' trium Justic' ad Pacem  
and to be cer- p̄dict Comd S. ubi pōict terr' ut p̄z-  
tified secund' p̄dict facent & facebant p̄fat' tunc Wal-  
intention' Ad- libis Will G. p̄dict & fore irrotulat' int'  
as p̄d'. Record ibidem secundum formam effectum & veram

veram intencōd Ad' pōict p quod dicta In-  
dentur & omnes Convenōd in eadem con-  
tent' in suo roboze vigoze & effectu remanent  
& existunt Et hoc parat' est verificare Unde  
pet' iudic' & dampna sua occone fraciond Cons-  
venōd pōict sibi adjudicari, &c.

Et pōict G. P. dic' quod pōict G. P. *Rejoinder,*  
Pater ipsius G. tempore consecōd In- *That the De-*  
dentur' pōict' non seiscus fuit in Dñico *fendant's Fa-*  
suo ut de feodo de & in pōict decem Acr' *ther was not*  
terre cum pertind modo & forma put pōict *seized in Fee*  
R. supius replicando allegavit Et de hoc pon *of the said*  
se sup P'ziam, &c. *Ten Acres,*  
*Et de hoc pon'*  
*se super Pri-*  
*am' &c.*

Quer' mozatur in Lege, & p causis quod *Demurr'.*  
pōict G. non manutenet materiam in placito  
suo pōict in Barr' placitat' sed ab eadem ma-  
teria decessit quam p defectu sufficiend Ma-  
terie in eodem plito Rejungendo placitat'  
content', &c. Def. jung' in mozac. Vide  
Winch. Ent. 136, 137.

*Bar*, By the said Statute upon a Bond to perform Covenants in an Indenture of Apprenticeship.

**¶** **D** E F. per' auditum scripti pōict Et ei legitur &c. per' etiam audiū Condiçōn ejusdem scripti Obl' Et ei legitur in hec verba **¶** The Condition (&c.) Quibus lectis & auditis idem R. dic' quod ipse de Debo pōict p'textu scripti Obl' pōict onari non debet Quia dic' quod Indentur' pōict in Condiçōn pōict superius spec' faci' fuit apud Civic' C. pōict in Cond ejusdem Civic' pōict 23 die Julii Anno Regni dici' Domini Regis nunc primo supradicto int' ipsum R. L. & pōict J. L. in Condiçōne pōict superius nominat' per nomina (&c.) ex una parte Et

*Note*, That the Condition runs, That if the above-bounden R. L. (the Father) pay and keep all and singular the Covenants, Grants, Articles (&c.) which on the Part and behalf of the said J. L. (the Apprentice) are and ought to be observed, &c. And *Quere*, How it is possible for a third Person to perform the Apprentice's Covenants.

p'fat' A. & S. per nomina (&c.) ex altera parte cūsus quidem Indentur' alteram partem sigillis ipsorum A. & S. sigillat' gerendat' eisdem die & Anno idem R. hic in Cur' p'fert p' quam quidem Indent' testat' existit quod pōict J. L. tam de electione sua p'p' quam p' & cum consensu Patris sui p' Indentur' pōict posuisset & obligasset seipsum Apprentice ad & cum pōict A. & S. habitare remanere



manere & servire a dat' Indentur' p̄dict p  
 & durand termino septem annorum plenar'  
 complend & finiend durand omni quo tempore  
 ipse p̄dict A. L. p Indentur' p̄dict convenit  
 & pmisit ad & cum p̄dict A. & S. secreta  
 sua concealare mandat' suis litemis & hone-  
 stis in p̄mptu obedire & p̄formare (and so  
 sets forth the Covenants in the Indenture  
 on both Parts) put p Indentur' p̄dict ple-  
 nius liquet & apparet Que sunt omnes &  
 singule Conventiones concession Articuli &  
 Agreement' in Indentur' p̄dict contenu' Et  
 idem R. ulterius dic' quod ipse die & anno  
 supradictis in Parr' p̄dict apud Civit' E.  
 p̄res in Cond esuldem Civit' fecit & delibavit  
 eisdem A. & S. p̄dict script' obl' pro p̄for-  
 mation' Convention' Bargan' & Agreement'  
 in Indentur' spec' ex parte p̄dict A. L. p̄-  
 formand Quodque diu ante confectio' script'  
 obl' p̄dict & Indentur' p̄dict p quendam Ac-  
 tum in Parliament' apud Westm' in Cond  
 p̄dict 12 die Januarii Anno regni Dñe Eliz.  
 nup Regine Angl' quinto cent' edit' (inc' alia)  
 Provisum & inactitat' fuit authoritat' esuldem  
 Parl' quod non liceat alicui p̄sone Inhabita-  
 tan, &c. (as in the former Precedent, usq) pe-  
 nitus vacue forent in Lege ad omnes inten-  
 tiones & p̄posit' prout p eundem Actum  
 inc' al' plenius liquet & apparet Et idem  
 R. in facto dic' quod p̄dict Civitas Exon in  
 Cond p̄dict' supius spec' est & tempore confec-  
 tion' Indentur' p̄dict necnon a tempore cu-  
 jus contr' memoria homin' non existit fuit  
 antiqua Civitas incorporat' Et quod quidam  
 J. W. Ar' tempore confectio' esuldem Inden-  
 tur

Statute  
pleaded.

tur & captio[n]d Appre[n]tic p[ro]dict' fuit M[aj]or  
p[ro]dict' Civit' C. scit' apud Civit' C. p[ro]dict'  
in Com[uni] ejusdem Civit' ac quidam M. P.  
W. J. R. M. & T. B. adunc & ibidem  
fuer' Ballivi ejusdem Civit' Quodq[ue] p[ro]dict' A.  
W. & S. p[ro]dicto tempore confectio[n]d Indentur'  
p[ro]dict' ac retentio[n]d & captio[n]d Appre[n]tic p[ro]  
inhabitabant & adhuc inhabitant infra Civit' C.  
p[ro]dict' & adunc & ibi[m] utebantur & exerce-  
bant & adhuc utuntur & exercent Mysterium  
& Artem Mercatoris negociand p[er] commer-  
cium & negociatio[n]d apud B. in partibus  
transmarinis scit' apud Civit' C. in Com[uni]  
ejusdem Civit' Quodq[ue] p[ro]dict' J. L. Appre[n]-  
tic adunc & ibi[m] fuit filius p[ro]dict' R. L.  
& M. M[at]r' ejus Patris & Matris ipsius J.  
L. & non filius A. W. & S. vel eorum  
alicujus Quodq[ue] nunquam certificat' fuit sub  
manibus & sigillis aliquorum Justic ad Pa-  
cem D[omi]ni Regis conservand alligand M[aj]ori  
Ballivis sive al' Capital' Officiariis p[ro]dict'  
sive eorum alicui quod Pater & Mater p[ro]dict'  
J. huer' terras tenta seu al' hereditamenta  
clari annui valoris 40 s. de statu hereditario  
sive libero tento Quodq[ue] aliqua talis Certi-  
ficatio nunquam irrotulat' fuit int' Reco[r]d  
Civit' p[ro]dict' ibi[m] secundu[m] formam Statuti in  
hujusmodi Casu edit' & p[ro]vis' Et sic idem J.  
dic' quod Indentur' p[ro]dict' ac Clausule & Con-  
ventio[n]d p[ro]dict' in eadem content' & spec' fact'  
fuer' & sunt p[er] retentio[n]d captio[n]d & custod  
Appre[n]tic alit' & al' modo quam p[er] Stat'  
p[ro]dict' limitatur ordinatur & appunctuatur per  
quod Indent' p[ro]dict' hic in Cur' plat' ac in  
Parr' p[ro]dict' superius spec' ac omnes & sin-  
gule



gule Conventiō Articuli & Agreement' in eodem content' mentionat' specificat' & comprizat' necnon p̄dict' script' Obl' in forma p̄dict' occōne p̄dict' delibat' p̄ p̄solationē Conventiō p̄dict' vigoze Statuti p̄dict' in huiusmodi casu edit' & p̄bis' penitus vacue & nullius vigoze sive validitatis in Lege debener' & existunt Et hoc idem R. parat' est verificare Unde per' iudicē si ipse de deho p̄dict' virtute script' Obl' p̄dict' onerari debeat, &c. See Bro. Rediviv. 224.

*Aliter upon a Bond to perform Covenants in an Indenture of Apprenticeship.*

**D** Et. per' auditum Conditionis, &c. Quibus lectis (&c.) Testat' quod p̄s. T. B. cum consensu amicoꝝ suoꝝ posuisset se Appren̄tice & Conventiō servien̄ ad & cum p̄dicto R. M. in Arte de le Drapery informand' & ad morand' & habitand' cum ipso a die Festi Natalis Dñi tunc ult' p̄terit' ante dat' ejusdem Indentur' durand' plenīs fine & termino p̄dicto annoꝝ integroꝝ extunc p̄r' sequen̄ & p̄s. par' complen̄ & finiend' p̄ totum quem quisdem p̄dict' terminū dictus Appren̄tice dictum Magistruū suum bene & fidelit' serviret secreta sua custodiret, &c. (and so recites over the Statut' re-  
Covenants in the Indenture on both Parts) cite.  
p̄out p̄ eandem Indentur' plenius apparet.  
Et idem R. dic' quod in Statuto in Parlamento dicte Dñe Regine nunc anno regni



## Bar al Covenant & Condition.

ni sui quinto apud Westm' ten' edit' int'  
 al' Inactitat' fuit & ordinat' quod non liceret  
 alicui plone Inhabitant' in aliqua Civitate  
 seu Villa Corporat' utend' sive exercend' aliquas  
 de Mysteriis seu artibus de 163 Merchants  
 transacting by Traffick or Trade into any  
 the Parts beyond the Seas, Mercer, Draper,  
 Goldsmith, Ironmonger, Embroiderer, Clothier,  
 that doth work or put Cloth to Making  
 or Sale, ad capiend' aliquem Apprentic' seu  
 servum instruend' seu informand' in aliqua  
 Artium occupation' scientiar' seu myster' quibus  
 illi seu eorum aliquis utebantur vel exercebant  
 utebatur vel exercuit nisi talis servus seu Apprentic'  
 esset filius suus aut quod Pater seu Mater  
 talis Apprentic' seu servi haberet tempore acceptationis  
 talis Apprentic' sive servi terras tenens  
 ta seu al' hereditament' clari annui valoris 40 s.  
 de Statu hereditario seu libi tenenti ad minus  
 sub manibus & sigillis trium Justic' Pacis  
 de Cond' sive Cond' ubi dict' terr' tenita seu  
 al' tenita facerent Mafori Ballivo seu al' Capital'  
 Officiar' hujusmodi Civitat' seu Vill' corporat'  
 certificand' & int' Recozda ibidem insculand'  
 Et ulterius in statut' pdict' Inactitat' & ordinat'  
 existit quod omnes Indentur' Conventions  
 pmissio' aut barganie de aut p habend'  
 accipiend' seu custodiend' aliquem Apprentic'  
 alit' deinceps faciend' seu accipiend' quam  
 p idem Statut' limitat' ordinat' & pvisum  
 est omnino vacue essent in Lege ad omnia  
 intencion' & pposita Et quod quelibet  
 plona que deinceps acciperet aut de novo res-  
 tineret aliquem Apprentic' contra tenorem &  
 veram intencionem ejusdem Actus forisface-  
 ret & pderet p quolibet Apprentic' sic p  
 ipsum

Forfeiture  
 del 10 l

ipsum accept' sumam decem libe put p idem  
 Statut' plenius apparet Et p'dict R. B.  
 ulterius dic' quod p'dict R. M. tempore  
 confectiō Indentur' p'dict ac tempore confec-  
 tiō scripti Obl' fuit comozans & inhians in  
 dicta Civit' Cestr' que est & tempore p'dict  
 & pantea fuit antiqua Civitas quodqz idem  
 R. adunc & temporibus p'dict fuit utens &  
 exercens mysterium sive artem de Draper in-  
 fra Civit' p'dict Et sic utens & exercens ar-  
 tem & mysterium p'dict' p'dicto tempore con-  
 feciō dia' Indentur' acceciā tempore con-  
 feciō scripti Obl' p'dict apud L. p'dict  
 in Paroch' & Warda p'dict' per Indentur'  
 p'dict accepit p'fat' B. T. in Apprentic'  
 suum in Art' & Mysterio p'dict & in eisdem  
 Arte & Mysterio infozmand' & instruend' se-  
 cundum tenor' Indentur' p'dict Et idem R.  
 ultius dic' quod p'dict T. B. adunc fuit Fi-  
 lius naturalis ipsius R. int' ipsum R. & M.  
 adunc Ur' suam legitime p'creat' & non  
 Filius dicti R. Acceciā quod nec ipse idem  
 R. nec p'dict M. adunc Ur' ejus ac Ma-  
 ter ejusdem T. tempore acceptaō p'dict T.  
 p p'dict R. in Apprentic' suum tempore  
 confectiō Indentur' p'dict' seu scripti Obl'  
 p'dict habuer' nec alter eorum huit terras  
 ten'ta seu al' hereditament' clari annui valo-  
 ris 40 s. de Statu hereditario seu libi ten-  
 ti secundum formam & effectū Statut' p'dict'  
 sicque idem R. dic' quod tam Indentur' p'dict  
 ac omnes conveniō p'missiō & agreamenti'  
 in eadem spec' quam p'dict' script' Obl' sic  
 indozlat' sub condiōne & p'formaōn' conven-  
 tiō p'missiō & agreamenti' in Indent' p'dict  
 spec' omnino vacua sunt ac nullius vigoris  
 4 neqz



neg effectus in Lege virtute Statuti p̄dict Et hoc parat' est verificare Unde pet' iudic si p̄dict R. Accōd suam p̄dict' vers' eum here debeat, &c. See Rob. Ent. 193, &c.

(66) Bar, That the Master turned away the Apprentice, and that the Apprentice had faithfully served him till that Time.

R. D E F. pleads over the Indenture, &c. p̄out p̄ eandem Indentur' plenius apparet Et idem G. dic quod post consec- cōd scripti p̄dict & ante finem p̄dict' termi- ni septem annorum tunc pr' sequen' scite (tali die & anno) apud L. p̄dict p̄dictus R. G. posuit p̄dict' T. Apprentic' suum e- servicio suo Et idem G. ulterius dic quod p̄dict' T. a p̄dict' Festo S̄ci Johis Baptiste anno nono supradicto usque eund' p̄imum di- em Augusti Anno 11. supradicto bene & fidelit' ut Apprenticius serviebat eund' R. G. tam p̄ Mare quam p̄ terram secreta sua con- celabat p̄cept' sua l̄tima & honest' ubique volent' faciebat & p̄ posse suo complebat, Fornication' sive Adulterium non committe- bat nec aliquam mulierem in Trozem duce- bat Ad cartas luforias aleas aut aliquos al- lufos illicitos non ludebat tabernas aut di- versoria customar' non frequentabat nisi circa negoc' Magistri sui p̄dict' t̄m fiend', dampn' sive p̄d̄cōd Anglice Los d̄co Magistro suo non faciebat, nec fieri consentiebat sed eadem



p posse suo impediēbat aut statim inde dicto Magistro suo noticiam dedit, a servicio dicti Magistri sui p noctem seu p diem seipsum non absentabat sive detinebat sed in omnibus ut bonus verus iustus & fidelis Apprentice secundum modum Apprentic' Civic' L. seipsum utebatur & gerebat secundum formam & effectum Indentur' pdict' Et hoc parat' est verificare Unde pet' iudic' si pdict' (Quer') Accord suam pdict' inde versus eum habere debeat, &c.

Quer' dic' pcludi non, quia ptestando quod pdict' L. non observavit pformavit pimplevit sive custodivit aliquid in Indentur' pdict' supius spec' ex parte sua observand' pformand' pimplend' sive custodiend' secundum formam seu effectum ejusdem Indentur' put pdict' G. supius allegavit p plico idem R. dic' quod pdict' L. post pdict' Festum Scti Johis Baptiste & ante finem pdict' termini septem annor' tunc pr' sequend' scilicet pdicto primo die Augusti Anno regni dicti Dni Regis nunc 11. supradicto apud L. pdict' e servicio ipsius pdict' R. contra voluntat' ipsius R. recessit contra formam & effectum Indentur' pdict' Absque hoc quod pdict' R. post conseccon' scripti pdict' & ante finem pdict' septem annorum dictum L. e servicio suo extrapoluit & eundem L. de dicto suo servicio exponeravit put pdict' G. supius allegavit Et hoc parat' est verificare Unde pet' iudic' & debitum suum pdict' unacum dampnis

Replic'. *Protestando*, That the Apprentice did not perform any Thing, &c. *pro placito*, That he departed against the Plaintiff's Consent, and traverses that he put him from his Service.

nis suis occōne detencon̄ debi illi sibi ad  
judicar' &c.

Rejoinder  
and Issue  
upon the  
Traverse.

Et p̄dict G. ut p̄ius dic' quod p̄dict R.  
post confeccon̄ scripti p̄dict & ante finem  
p̄dict septem annorum eundem T. e servicio  
suo extrapōsuit & eundem de dicto servicio  
suo eronerabit p̄ut idem G. sup̄ius allega-  
bit Et de hoc p̄vid se sup̄ P̄iam Et p̄dict  
R. alit' Ideo vend̄ inde Jur, &c.

(67) The Master pleads in Bar, That for  
The better Instruction and Experience of  
the Apprentice, he sent him with o-  
ther expert Chirurgeons into the *Indies*,  
&c.

II. **E**T p̄dict J. W. p̄ R. B. Attorn̄ su-  
um vend̄ & defend̄ vim & injur quan-  
do, &c. Et dic' quod p̄dict R. C. (Action  
non) quia dic' quod bene & verum est quod  
iple post confeccon̄ scripti p̄dict & ante p̄dict  
secundum diem Febr' Anno regni Dñi Regis  
nunc Angl' nono sup̄radicto apud L. in Pa-  
roch & Waro p̄dict recepit & retinuit in  
serviciū suum p̄dict R. R. Apprentic' suum  
p̄ut p̄dict R. C. p̄ narr' suam p̄dict sup̄ius  
suppon̄ sed idem J. W. ultius dic' quod i-  
dem J. W. postquam ipse recepit & re-  
tinuisset in servic' suum p̄dict R. R. Ap-  
prentic' suum ut p̄dict est eund̄ R. R. Ap-  
prentic' suum eodem p̄mo die Febr' anno 9  
sup̄radicto



supradicto & abinde usq; 7 diem Martii anno regni dicti Dñi Regis nunc Angl 12. supradicto apud L. in Paroch & Warda pñ in domo sua ppz' ibm in servicio suo ibm retinuit docuit custodivit & usus fuit optimo modo quo potuit pñct arte sive mystério Chirurgie pñct Et idem J. W. ulterius dic quod ipse p meliori instructione doctrina experientia & exercitio pñct R. K. arte vel mystério Chirurgie pñct habend pñct 7 die Martii anno 12 supradicto apud L. in Paroch & Warda pñct eund R. K. Apprentic' suu ad eund & redeund in Rave pñct in quodam viagio in eadem Rave a portu L. usque ad pñct Willam Wantame in India Orientali in partibus transmarin & rursus ab eadem Villa in hoc Regnum Angl fiend simulcum aliis expertis Chirurgis ad eund & redeund in Viagio pñct tunc retent' & ad utend & exercend artem vel mystérium pñct cum eis ut Apprentic' ipsius J. W. in servicio ipsius J. Idemq; R. K. ut Apprentic' ipsius J. W. in servic' ipsius J. in Rave pñct in Viagio pñct & pñct Port' de L. pñcto 7 die Martii Anno regni dicti Dñi Regis nunc Angl 12 supradicto in Rave pñct appulit & ibm jam remanet utens & exercens p totum tempus pñct artem sive mystériu pñct ut Apprentic' ipsius J. W. in servic' ipsius J. ac reditur in Rave pñct cum eadem Ravis in Viagio pñct a Villa pñct in hoc regnum Anglie redierit que abinde in hoc Regnu Angl nondum redit Et hoc parat' est verificare Unde per' iudic' si pñct R. K. accõd suam pñct vers' eum habere debeat

(Part IV.) Q



debeat, &c. Quer' moratur in Lege & Def.  
jung in Morac. Vide Hob. 134. Coven-  
try *versus* Woodall.

Upon this Demurrer Judgment was given for the Plaintiff, for it was expressly against the Covenant; for though the Covenant were not so restrained to the House in meaning, but that he might send his Servant or Apprentice into other Places about his Cures; yet he must be still as one of his Household coming and going, and in his Service, and not put over to any other: For the Matter of putting an Apprentice is a Matter of great Trust for his Diet, for his Health, for his Safety and therefore by Choice committed to one and not to another; and generally no Man can force his Apprentice to go out of the Kingdom, except it be so expressly agreed, or that the Nature of his Apprenticeship doth import it, as if he be bound Apprentice to a Merchant Adventurer, or a Sailor, or the like. See also the Case of *Chamberlain versus Harvey*. 5 Mod. 186, &c.

(68) A Servant brings Debt for his Wages.  
 Defendant pleads, That before such a Day  
 he discharged the Plaintiff from his Service,  
 whereupon he left his Service. *Replie' qd'*  
*non exoneravit & Issue.*

**A**CTION non Quia die quod idem J.  
 12 die M. quo supponitur ipsum  
 W. a servicio ipsius M. recessisse ante re-  
 cessum illum apud C. in Comd M. exoneravit  
 ipsum W. de servicio illo quo p̄textu  
 idem W. ab eodem servicio recessit put et  
 bene licuit Et hoc (sc.) Unde petit Judi-  
 cium si p̄dict J. Actionem suam p̄dicta' versa-  
 rum here debeat, &c.

Et p̄dict J. dicit quod (p̄cludi non) quia  
 die quod ipse non exonerabit ipsum W. a  
 servicio p̄dicto put p̄dict W. sup̄ius allegabit  
 Et hoc petit quod inquiratur p̄ Patriam Et  
 p̄dict W. similiter Ideo duodecim, &c.

(69) Defendant confesses that the Plaintiff  
 did come into the Service of the Testa-  
 tor, and therein continued till such a Time,  
 when the Testator did plentifully provide  
 for him, and that such a Day the Plaintiff  
 voluntarily left his Service.

**E**T modo ad hunc diem, &c. Et idem  
 G. defend vim & insur' quando, &c.  
 Et die quod p̄dict R. (Accidit non quia  
 Q<sup>2</sup> die

die quod bene & verum est quod p̄dict R. veniebat in servie p̄dict W. p̄dicto 21 die Martii Anno Dñi 1647. supradicto in Parr p̄dict supius spec & in servie ipsius J. continuabat usque ult' diem Dec' Anni Dñi 1658 duran' quo quidem tempore ipse p̄fat W. apud L. p̄dict in Paroch & Ward p̄dict uberrime p̄videbat p̄ p̄dict R. esculent' & poculent' ac etiam solvebat eidem R. summani octo Libz' legalis monete Angl annuatim p̄ salario suo Et p̄dict G. ulterius die quod p̄dict R. p̄dict ult' die Dec' Anno Dñi 1658. supradict' apud L. p̄dict in Paroch & Ward p̄dict servitium ipsius W. W. voluntarie reliquit Absque hoc quod p̄dict R. deserviebat p̄dict W. usque primum diem Novembz' Anno regni dicti Dñi Regis nunc 16 in Parr p̄dict R. supius mentionat' Et hoc parat' est verificare Unde pet' judic' si p̄dict R. Accōd suam p̄dict inde vers' eum habere seu manutenere debeat, &c. Quærmoratur in Lege Eo quod p̄dict G. traversabit materiam in casu m̄ie traversabil' ac quod p̄litum p̄dict caret forma, &c. Defendant joins in Demurrer.

This Action was brought in Case by R. O. upon the Promise of W. W. the Testator, and the Plaintiff declares that he had served one J. W. for three Years last before the 21st of March, 1641. and that he gained 60*l.* per Annum in that Service, and that he being so in Service, the Testator W. (in Consideration that the Plaintiff



at his Request *deserviret eidem W. W. & operam & curam suam impenderet in & circa negotia ipsius W.*) took upon himself, and promised the Plaintiff *quod ipse W. reciperet ipsum R. O. in Servic' ipsius W. & aestimaret ipsum R. ut Filium ipsius W. propr' ac uberrime provide- ret pro eodem R.* And the the Plaintiff avers that he giving Credit to the said Promise, upon the said 21st of March came into the Testator's Service, and served therein till the first of November Anno Regis 16. & per tot' tempus curam & operam suas in & circa negotia ipsius W. summa cum diligentia impendebat absque aliquibus mercede seu Sallario ei a præfat' W. W. proinde dat'. And then avers, That the said W. the Testator died the 9th of December, Anno Regis 18. interested and possessed of a Real and Personal Estate to the Value of 20000 l. and more, & nullos habuit liberos proprios; And then the Plaintiff assigns for Breach, *Quod prædict' Testator hucusque non uberrime provisit nec dedit ei aliquam compensationem pro servicio suo prædict' præterquam summam 20 l. quæ minus sufficiens fuit compensatio pro servicio suo prædict'*, although the Testator in his Life-Time, and the Defendant afterwards, was thereunto requested to the Damage of the Plaintiff 1000 l.

To which Declaration the Defendant pleads in Bar, as above: To which Bar the Plaintiff demurs, as above, and the Defendant joins in the Demurrer.

Upon the Argument of the Demurrer it was objected by the Plaintiff's Counsel,

Q 3

That

That the Plea was not good, because the Plaintiff thereby with his Traverse had only put Part of the Time of Service in Issue, viz. whether the Plaintiff served for any longer Time than the last Day of *December*, 1658. And so that to the whole Time before, for which also the Plaintiff ought to have Recompence, the Defendant had tender'd no Issue. And although the Defendant had alledged that the Plaintiff for that Time had a Recompence, yet that ought not to conclude the Plaintiff, but he may say that he had no such Recompence, or that the Recompence by the Defendant, supposed to be given, was too little. But here the Defendant by his Traverse had wholly excluded the Plaintiff to take any such Issue. And yet suppose that the Plaintiff had not served after the said last Day of *December* 1658. he ought to recover for the Time that he served before, if he was not satisfied for it; but now the Plaintiff could not put that in Issue whether he served before, or not, or whether he was satisfied for such Service or not, if the Traverse of the Defendant shall be good: And that this was only an Action on the Case, in which Damages are to be recovered, which are to be divided and proportioned according to the Length of the Time that the Plaintiff served, and therefore the Defendant cannot make one Part of the Time of the Plaintiff's Service an Inducement to traverse the other, as here he had done; as 1 *Bulst. Rep.* 116. *Yelv. Rep.* 225. Action on the Case for stopping Three Lights; the Defendant justified the Stopping of Two, and traverses

traverses that he stopped Three Lights ; the Plea was ill, because the Inducement came only to Part, *viz.* only Two Lights, and yet the Traverse came precisely to the whole Three, which ought not to be, because if the Defendant had only stopped Two, and not Three, yet in an Action on the Case, the Plaintiff ought to recover Damages *pro tanto*, but should be deluded of that by such a Traverse, if it should be good. But there the Defendant ought to have pleaded, as to the Stopping of one Light, Not guilty, and as to the other Two, to plead his Justification, and rely thereon, and then every Part of the Wrong supposed by the Plaintiff would be put in Issue. So here the Defendant ought to have pleaded his Matter in two Pleas, *viz.* one Plea, That for the Time that the Plaintiff served *usque ult' diem Decemb'*, 1658. he had received a Recompence, *Et hoc, &c. Unde, &c.* and another Plea, *viz.* That the Plaintiff after the said last Day of *Decem-ber*, 1658. had not served *modo & forma, &c. Et hoc, &c.* And so the whole Case would come in Issue; but now the Traverse had prevented it. Also that the Traverse it self was not good for another Reason, *viz.* For that the Defendant had precisely traversed the whole Time, *ab ultimo Decemb' 1658. usque primum Novembr' Anno Regis nunc 16.* by which if the Plaintiff had taken Issue thereon, he ought to have proved the Service for the entire Time, or otherwise he should not recover any Thing; whereas in Fact if he had served for any Part of the said Time, he ought to recover *pro tanto*; and upon Issue joined on



## Bar at Covenant &amp; Condition.

such Traverse, if the Plaintiff prove that he had served for one of the Three or more Years, yet if he did not prove that he had served *usque ad primum diem Novembr<sup>o</sup> Anno Regis nunc 16.* the Issue would be against him, although the Merits of the Cause were for him. And for these Reasons it was concluded, That the Defendant's Plea was ill, and so was the Opinion of the whole Court; and Judgment given for the Plaintiff, and a Writ of Inquiry awarded.

(70) Breach assigned for Monies, &c. purloined by the Apprentice.

¶ **T**O a Bond for Performance of Covenants, contained in an Indenture of Apprenticeship, Bar, *protest<sup>o</sup>*, That the Apprentice performed his Covenants, and that the Plaintiff gave no Notice of any Purloining, &c. Replication assigns Breach by Purloining of Money. — ¶ (*Precludi non*) quia dicit quod p<sup>o</sup>dict M. post confectio<sup>n</sup> script<sup>o</sup> Obl<sup>o</sup> & Indentur<sup>o</sup> p<sup>o</sup>dict & duran<sup>t</sup> tempore Appren<sup>t</sup>icialitatis sue in Indentur<sup>o</sup> p<sup>o</sup>dict sup<sup>o</sup>ius spec<sup>o</sup> scilicet tali die & anno apud L. in Paroch<sup>o</sup> & Warda p<sup>o</sup>dict 40 s. in pecuniis numerat<sup>o</sup> de benar<sup>o</sup> ipsius Quer<sup>o</sup> Magistri sui ab eodem quer<sup>o</sup> Magistro suo defraudabit Anglice did purloin & inde be<sup>o</sup> asportabit & consumpsit super quo p<sup>o</sup>dict Quer<sup>o</sup> postea scilicet tali die & anno apud L. in Paroch<sup>o</sup> & Warda p<sup>o</sup>dict dedit  
notie

notie p̄fat J. de Fraudencia & indeba al-  
portatōm pecuniarū ille p̄ p̄dict M. & aduinc  
& ibm requisivit p̄dict Def. quod ipse idem  
Def. solueret & satisfaceret eidem quer p̄ p̄dict  
40 s. sic p̄ p̄fat M. ab eodem quer tēd appren-  
ticialitat' sue p̄dict defraudat' & alportat' se-  
cundū formam & effectum Condicion p̄dict Et  
hoc parat' est verificare Unde pet' judic Et  
dehūm suum, &c.

Et p̄dict Def. ut prius dic quod p̄dict quer  
a tēd confectōm p̄dict Script' Obl hucusque  
non dedit notie eidem Def. nec eum requis-  
vit solvere seu satisfacere p̄ aliquibus pecuniis  
bonū seu cataf p̄ p̄fat M. de eodem Quer de-  
fraudat' seu alportat' put ipse lupius allega-  
vit. Et de hoc (&c.) Ideo, &c.

(71) Defendant being bound for the Truth  
of an Apprentice pleads to the Action, that  
he hath not purloined or imbezilled any  
Goods, except a Pair of Gloves, &c. for  
which he offered to pay.

¶ **P**recludi non, quia protestando quod  
p̄dict R. non obtulit ad solvendū eidem  
B. 2 s. 6 d. p̄ p̄dict par Chirothecarum p̄  
p̄dict R. cogit p̄ p̄fat M.  
illicite fuisse capt' portat' &  
conveiat' de & ab eod B.  
modo & forma put p̄dict R.  
superius allegavit prestando  
etia quod idem par Chiro-  
thecarū tēd p̄d' captiōm por-  
tationē & conveiant' inde fu-  
it major' valor' quam 2 s. 6 d.

*Repl' Protestando,* That the  
Defendant did not offer to pay,  
and that the Things were of  
greater Value, and that the Ap-  
prentice, before suing forth the  
Original Writ, imbezilled 5 l.  
of his Master's Money, besides  
other Things confessed.

pzo



pro placito idem B. dic' quod p'dict' W. C. post confectiōem Scripti p'dict' ac diu ante diem impetrac' h'ebis original' ipsius B. scilicet (tali die, &c.) apud L. p'dict' in Paroch' & Ward p'dict' suppolabit exhauribit male impendit illicite cepit & conueiabit, Anglice conveyed away, Quinque Libr' legalis monete Angl' de denar' ipsius B. propr' ultra & p'ter p'dict' par Chirothecarum, Unde p'basio adtunc & ibide' faci' fuit p' confessiōem p'dict' W. p'p'r. Quodque idem B. postea scilicet 30 die Julii Anno 23 supradicto apud L. p'dict' in Paroch' & Ward p'dict' p'fat' R. dedisset notic' inde ac quod p'dict' R. infra Tres menses extunc p'p'r' sequend' seu unquam postea hucusque non soluit seu satisfecit nec solui seu satisfact' fore causabit eidem B. p'dict' quinqz libz' secundum formam & effectum Condiōem p'dict' Et hoc, &c. Unde pet' iudic' & debum, &c.

Rejoind'  
and Issue.

Et p'dict' R. protestando quod nulla probatio fact' fuit p' confessiōem p'dict' W. de suppolacion' exhauriōem male impendiōem illicite captiōem & conueiaōem p'dict' 5 l. de denar' ipsius B. propr'. Protestandoque etiam quod p'dict' B. non dedit notic' eidem R. de suppolaciōem exhauriōem male impendiōem illicite captiōem, Anglice conveying, p'dict' 5 l. de denar' ipsius B. propr' p' p'dict' W. prout p'dict' B. supius allegabit, pro placito idem R. dic' quod p'dict' W. non suppolabit exhauribit male impendit illicite cepit nec conueiabit, Anglice conveyed, illas p'dict' 5 l. de denar' ipsius B. propr' prout p'dict' B. supius



supius allegabit. Et de hoc poñ se sup  
Pñiam. Et pñict B. similic'. Ideo, &c.

(72) Def. dic' quod Testator post confectiõ'  
Scripti obiit, Quodque Apprentic' ad nullum  
tempus post confectiõ' Script' se absentas-  
set, Et quod non imbezillavit.

¶ **Q**uibus lectis & auditis idem C. dic'  
quod R. D. & J. Accõñ non, quia  
dic' quod pñict T. C. post confectiõñ Scrip-  
ti pñict scilicet 24 die Junii Anno (sc.) 14  
apud L. in Paroch & Ward pñict obiit  
Quodque pñict' M. M. ad nullum tempus  
post confectiõñ Script' pñict duran' vita pñ  
T. C. illicitime exit vel seipsum a servic'  
sui ipsius T. in vita ejusdem T. absentasset.  
Et ulterius idem C. dic' quod pñict' M.  
M. non imbezillabit aut illicitime devassavit  
consumpsit vel male expendidit aliqua bona  
monetas mercimoniũ seu merchandiz' pñict T.  
C. in vita pñict T. Et hoc, &c. Unde,  
&c.

Precludi non, quia dic' quod in vita pñict Repl' Quod  
T. C. post pñict Festum Pativitat' Dñi & imbezillavit  
infra pñict octo Annos scilicet 25 die Febr'  
Anno, &c. apud L. in Paroch & Ward pñ  
dict 80 s. & 4 d. de bonis ejusdem T. ad ma-  
nus pñict M. M. debener' Quodque idem  
M. postea & infra pñict Annos & in vita  
pñict T. C. videlicet tali die & Anno, apud  
L. in Paroch & Ward pñict eisdem 80 s. &  
4 d.

4 d. tunc erissem denar' ipsius T. C. imbezillabit. Et hoc, &c. Unde per' iudicium & verum, &c.

Rejoin. and  
Ihus.

Et p'dict' C. dic' quod p'dict' W. M. p'dict' 80 s. & 4 d. non imbezillabit prout p'dict' R. D. & J. supius allegaver'. Et de hoc p'nd, (et.) Ideo, &c.

(73) Narr' in Debt upon Bond for the true Service of an Apprentice, after Oyer Bar by special Performance of the whole, and that no Notice was given of any Imbezilment. *Vide Antea*, 232.

II. **Q**uibus lectis & auditis idem C. dic' quod p'dict' J. Actionem suam p'dict' vers' eum habere non debet quia dic' quod p'dict' H. M. fil' semper a consec'ion' Script' Obl' p'dict' de ted in tempus reddidit iusta & vera comp'm & comp'a in Scriptis & se debite exoneravit ad & erga p'fat' J. de pro & concernen' omnibus & o'ib' tal' mercimoni' nonei' merchandiz' specialitat' billis de de ho & al' re & rebus quibuscunque que ad ali' quod tempus sive tempora quecunque post consec'ion' Script' Obl' p'dict' deveid' ad manus possession' sive curam, Anglice the Charge, p'dict' H. M. fil' racione vel causa Servicii sui cum p'dict' J. videlicet apud L. p'dict' in Paroch' & Ward p'dict'. Et idem C. ulterius dic' quod infra tres menses pr' ante diem impetrat' h'rebis

brevis Original' ipsius J. idem J. non dedit aliquam noticiam in Scriptis p̄lat' C. adhuc in plena vita existēd leu eidem Eliz. de aliquibus monet' bonis merciamon & merchandiz' specialitat' billis de Debito sive at re sive rebus quibuscunq̄ p̄dict J. sive Participum suoz' sive alicuius at plone sive psonaz cum quibus ipse ipsi vel eorum aliquis aliquo modo onerat' sive onerabil' fuer' vel forent p̄ ipm̄ H. W. ad aliquid quod tempus post consecōd script' p̄s ac durand p̄dict Termino octo Annorum imbezilar' fusrat' erept', Anglice purloined, male impens' Anglice mispent, vel illegitime accommodat' consumpt' sive detent'. Et hoc, &c. Unde, &c.

Et p̄dict J. dic' quod ipse p̄cludi non, quia dic' quod post p̄dict tempus consecōd Scripti Obl' p̄dict & ante expirationē p̄dict Termini Octo Annorum scilicet 28 die Martii Anno Dom̄ 1678. apud H. in partibus transmarinis scilicet apud L. p̄s in Paroch & Warda p̄dict Mille pecie panni lanei vocat' Spanish Cloths et quingent' pecie panni vocat' Devonshire Bays, de bonis & catall' ipsius J. & participi ejus ad manus & possessionē p̄dict H. W. rōne Servicii sui cum eodem J. debent. Quodq̄ p̄s H. p̄sterea scilicet 25 die Martii Anno Dom̄ 1680. L. p̄dict in Paroch & Warda p̄dict requisit' fuit reddere comput' de pannis p̄dict & seipm̄ debe exonerare de eisdem pannis Quodque p̄dict H. adunc & ibidem comput' de pannis ill' secundum formam & effectum Conditionē p̄dict reddere & seipsum de eisdem pannis

Repl', Per  
imbezil.



nis debe exonerare adtunc & ibidem penitus recusavit & neglexit. Et hoc, &c. Unde per judic' & debum, &c. Def. moxat' in Rege Et quer' jung' in moxat'. See 1 Lut. 386.

Upon the Argument these Exceptions were taken to the Replication.

1. That it is not therein said what Person made the Request to the Plaintiff, to account, &c. nor to what Person to give it, nor to give it in Writing according to the Words of the Condition.

2. That the Cloths, by the Replication supposed to come to the Hands of the Apprentice, and for which he had not given any Account, were delivered to him at *Hamburgh, in partibus transmarinis*, so that if Issue should be taken upon it, no Trial could be.

3. That by the Replication, a Request to account is alledged, and that the Apprentice, *adtunc & ibidem recusavit*, but says not *& adhuc recusat*, and the Condition is to account upon reasonable Demand, and for these Causes the Replication was held to be ill. But a Rule was made to plead so that the Cause might be tried. See 1 Lut. 389.

See *Winch's Entries*, fo. 168. Debt by an Executor against an Attorney, being an Executor upon a Bond to perform Covenants in an Indenture of Apprenticeship. Defendant after *Oyer* of the Condition pleads in Bar, That it was not proved that the Apprentice made Waste according to the Form of the Condition. The Plaintiff replies, that the Apprentice served him from such a Day to such  
 a Day

a Day ; and within that Time received Goods of his Master's and wasted them, and had acknowledged such his Waste by Writing, &c. And the Plaintiff gave Notice thereof to the Defendant, and that he made no Satisfaction within Three Months according to the Condition of the Bond. Defendant demurs generally, and the Plaintiff joins in Demurrer.

Hereupon Two Questions arose. 1. If in the Breach it is sufficient to express, That the *Flemish* Money was the Wares of the Master ? 2. If such a Confession of the Apprentice is legal Proof ? For it was not before any Body nor to any Body ; and yet notwithstanding it is good against the Apprentice.

Thus have we taken a Review, either by Precedent or Reference, of all the Bars and Pleadings extant concerning the particulars first mentioned, with those relating to Charterparties, and the Indentures of Apprenticeship.





## (1) Bar al Debt sur Recovery.

In Debt upon a Judgment by *Non probs* in  
the *Marshal's Court*.

Defendant pleads in Bar, That the King  
did not grant any such Court to hear  
Pleas between Persons not being of the  
Household.

**N.** **E** **T** **P**oict R. p J. D. Attoꝝd suum  
venit & defendit vim & injur quando;  
sc. Et dic quod poict R. Action suum p  
vers' eum habere non debet quia dic quod  
dictus Dominus Rex nunc p L'ras suas  
Patent non concessit aliquam Cur virge Hos  
pitiu ipsius Dñi Regis poict tenend coram  
Pfat L. W. Mil Marechal' ejusdem Hospitiu  
& F. B. Mil' Attoꝝd dicti Dond Regis  
nunc General' Judic Cur ill ad audiend  
& determinand omnia placita psonalia int p  
sonas de Hospitio Dond Regis non existend  
put idem R. supius narrando allegavit Et  
hoc parat' est verificare. Unde per' judic  
fi poict R. Action suam poict vers' eum  
here debeat, sc. Quer moꝝac in Rege, Et  
Def. jung in moꝝac. Vide Winch. Ent.  
184.

Adm<sup>o</sup> in Banco Regis placitat in Bar Judic<sup>o</sup>  
super veredc<sup>o</sup> al Nisi prius apud Westm<sup>o</sup>.  
Repl<sup>o</sup> per Nul tiel Record<sup>o</sup>.

¶. Precludi non, quia dic<sup>o</sup> non het<sup>o</sup> alia  
quod tale Recordum recuperationis p<sup>o</sup>dict<sup>o</sup> vers<sup>o</sup>  
p<sup>o</sup>dict<sup>o</sup> T. L. ad sec<sup>o</sup> ipsius T. P. in p<sup>o</sup>dict<sup>o</sup>  
Cur<sup>o</sup> Dom<sup>o</sup> Regis coram ipso Rege de Record<sup>o</sup>  
do residend<sup>o</sup> qual<sup>o</sup> idem T. L. sup<sup>o</sup>ius placitan-  
do allegabit. Et hoc parat<sup>o</sup> est verificare.  
Unde per<sup>o</sup> iudicium & dampna sua octone, &c.  
sibi adjudicari.

Et p<sup>o</sup>dict<sup>o</sup> Def. dic<sup>o</sup> quod het<sup>o</sup> tale record<sup>o</sup>  
recupaco<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> vers<sup>o</sup> ipsum Def. ad lect<sup>o</sup> p<sup>o</sup>  
Quer<sup>o</sup> in p<sup>o</sup>dict<sup>o</sup> Cur<sup>o</sup> dicti Dom<sup>o</sup> Regis coram  
ipso Rege nunc hic scilicet apud Westm<sup>o</sup>  
p<sup>o</sup>dict<sup>o</sup> de Record<sup>o</sup> residend<sup>o</sup> qual<sup>o</sup> idem Def.  
sup<sup>o</sup>ius inde placitando allegabit. Et hoc pa-  
rat<sup>o</sup> est verificare p<sup>o</sup> Record<sup>o</sup> illud, sup<sup>o</sup> quo  
dictum est p<sup>o</sup> Cur<sup>o</sup> dicti Dom<sup>o</sup> Regis p<sup>o</sup>lat<sup>o</sup>  
Def. quod hec Record<sup>o</sup> illud coram Dom<sup>o</sup>  
Rege apud Westm<sup>o</sup> die——pr<sup>o</sup> post——  
sub piculo suo Idem dies Par<sup>o</sup> est p<sup>o</sup>lat<sup>o</sup>  
Quer<sup>o</sup> ibidem, &c. Vide Vidian's Entries, fo.  
48. & vide postea.

Debt against an Administratrix upon a Re-  
covery in the Common Pleas against her  
Intestate.

Bar.

¶. Et p<sup>o</sup>dict<sup>o</sup> C. p<sup>o</sup> G. D. Acto<sup>o</sup>z<sup>o</sup> suu<sup>o</sup> vend  
& defend<sup>o</sup> him & injur<sup>o</sup> quando, &c. Et dic<sup>o</sup> q<sup>o</sup>  
p<sup>o</sup>dict<sup>o</sup>.

pd' W. Actionem suam pd' vers'  
 ea Here non debet, Quia dic' qd'  
 bene averum est quod cons' fuit  
 in pd' Cur' pd' nup Reg' coram  
 ipsa nup Regina quod Judi-  
 cium pdict' de recuperacione des-  
 bi & dampnorum pdict' in om-  
 ni suo roboze staret & virtute

Defendant confesses the  
 Judgment and Affirmance  
 of it in Error, and pleads,  
 that the Plaintiff brought a  
*Scire fac'* upon the said  
 Judgment against the now  
 Defendant in the *K.'s Bench*.

Et quod idem Iudicium in omnibus affir-  
 maret' pdict' Causis seu materiis supius p  
 Erroze Assign' in aliquo non obstant' put pd'  
 W. B. in Parr' sua pdict' supius narran-  
 do allegavit, sed eadem Eliz' ulterius dic'  
 quod pdict' W. B. post Iudicium pdict' in  
 pdict' Cur' pdict' nup Rne coram ipsa Rna  
 in forma pdict' affirmat' & ante diem im-  
 petrac' brevis original' pdict' W. scilicet 23  
 die April' Anno Regni dicte nup Regine  
 41 p Execucione de debito & dampno pdict'  
 sup eodem Iudicio hend' psecut' fuit extra  
 pdict' Cur' dicte nup Regine apud Westm'  
 pdict' tunc existent' quoddam hze de Scire fa-  
 ciend' tunc Wic' London' direct' p quod qui-  
 dem hze eadem nup Regina recitand' Cum  
 eadem nup Regina nup in Cur' ipsius nup  
 Regine coram ipsa nup Regina accipiens qd'  
 in Reco'd' & pcess', &c. reciting the *Scire fac'*  
 and the Administratrix her Plea to the same,  
*viz.* That after the said Judgment and Out-  
 lawry, the Intestate was bound in a Recog-  
 nizance, and afterwards the Intestate brought  
 the said Writ of Error, and that afterwards  
 the Intestate died, and Administration was  
 committed to the now Defendant, and the  
 Administrators brought the said other Writ



of Error, and the Outlawry was reversed, and that before the *Scire fac'* brought, a *Capias* issued out of Chancery upon the said Recognizance; and the Intestate returned *mortuus*; whereupon an *Extent* issued out of Chancery, and a Return thereupon, that the Intestate had divers Goods but no Land; and a *Liberate* issued, and a Return thereupon that all the said Goods were delivered upon the *Extent*, in Part of Satisfaction of the Recognizance over which she had no Goods. That to this Plea the Plaintiff then replied, That before the said Recognizance he recovered the said Debt and Damages against the Intestate, and that thereupon the Intestate was outlaw'd, and brought the said Writ of Error, and recites the first Writ of Error, and a Recital of the Record thereby removed *in hæc verba*, with the *Exigent*, and the Return of the *Exigent*: And that the Plaintiff then further said, That pending the said Writ of Error the Intestate died possessed of Goods to the Value of the Debt, and that the Administration was committed to the now Defendant, and that the Administrator brought a new Writ of Error; and Recital thereof *in hæc verba*, and Errors assigned upon the Outlawry with *Certiorari* to the *Custos Brevium* and Return thereof, and *in Nullo est Errat'* pleaded, and the Judgment affirmed, and the Outlawry reversed; and that the Plaintiff then further said, That the said Judgment was affirmed before the Purchase of the said *Capias* and *Extent*, and then demanded Judgment and Execution, for that the Administratrix had Notice of the said Judgment.

Judgment. To which the now Defendant then demurred, and the Plaintiff joined in Demurrer, and after several Continuances, that the Plaintiff's Plea was adjudged insufficient. Et tunc coram fuit quod pōict W. R. nil capet p breve suū pōict sed p falso clamore suo esset in mīa Et quod pōict C. R. tret inde sine die — Prout p Record & Process inde in Cur Domini Regis nunc coram ip. so Rege apud Westm pōict remanend ples ne liquet & apparet & hoc eadem C. parat est verificare Unde per iudiciū si pōict W. Actionē suam pōict vers eam habere debeat (pōicto Iudicio pōicto hī de Scire fac, Quare idem W. vers eand' C. de Jūdic pōict sic ut pferat affirmat' executionem hēre non debeat) in suo pleno robore & effectu mīe reverlat' seu in aliquo annihilat' existend. Cum hoc quod eadem Eliz. verificare vult quod idem W. R. modo Quer ac pōict W. B. in pōict brevi de Scire fac & in Record pōict in Parr' pōict supius nominat' sunt una & eadem psona & non al' neque diversa, quodque pōict Eliz. in pōict brevi de Scire fac & in Record pōict in Parr' pōict supius nominat' ac pōict Eliz. modo Def. sunt unū & eadem psona & non al' neque diversa ac quod pōict J. R. in Record pōict sup pōict brevi de Scire fac fac' supius mentionat' ac pōict J. R. in Parr' pōict supius nominat' sunt unū & eadem psona & non al' neque diversa, Quodqz debet' & dampnū in pōict brevi de Scire fac supius spec ac debum & dampnū pōict in Parr' pōict supius menc sunt unū & eadem debum & dampnū & non al' nes

Prout per Record.

Averments.



que diversa Et quod p̄dict̄ iudiciū de recuperatione deb̄i & dampn̄ in Part̄ p̄dict̄ sup̄ius spec̄, ac p̄dict̄ iudiciū de recuperatione deb̄i & dampnoz̄ in p̄dict̄ brevi de Scire fac̄ sup̄ius spec̄ sunt un' & idem iudic' & non al' neque diversum. Quodq; ipsa eadem Eliz. non het nec post liberationem bonoz̄ p̄dict̄ prefat̄ R. III. per exten' p̄dict̄ sic ut pfat̄ fact' nec unquam postea fuit aliqua alia nec plura bona seu catalla que fuer' pfat̄ J. tempore mortis sue in manibus suis Administrand' nec ad manus ipsius C. debener' aliqua al' nec plur' bona seu catalla que fuer' p̄dict̄ J. R. tempore mortis sue administrand' Quodque iudic' p̄dict̄ in p̄dict̄ Cur' dicte nup̄ Regine rogam ipsa Regina sup̄ p̄dict̄ brevi de Scire fac̄ in forma p̄dict̄ reddit' adhuc in pleno robore virtute & effectu mie reberlat' sive frustrat' aut annulla existit, &c. Quer' morat' in Lege & Def. jung' in morat'. See Co. Ent. 353, 354. &c.

In Debt. Repl' per nul tiel Record; & Certiorari Constabular' un' quinque Portuum,

II. Et p̄dict̄ J. S. p̄ T. Attorn̄ suum vend, (et.) Et protest' quod villa de S. est un' portus de Quinque portibus & quod breve Dom̄ Regis infra Quinque port' nec infra aliquem port' cureit p̄ placito dic' quod p̄dict̄ J. B. Action̄ suam p̄dict̄ vers' eum habere non debet Quia dic' quod non het' aliquod tale Record



coro pꝛout ꝑdict J. B. ꝑ Marc suam ꝑdict  
superius suppon Et hoc parat' est verificare  
Unde ꝑet' judic' a ꝑdict B. Action' suam  
ꝑdict vers' eum here debeat, &c.

Et ꝑdict J. B. dic' quod heur tale Re-  
cordum ꝑut idem J. ꝑ Marc suam ꝑdict Replic'.  
suppon Et hoc parat' est verificare ꝑ Record  
illud, &c. Sup quo idem J. B. dic' quod  
Villa de S. est und Port' de ꝑdict Quinqz  
Portibus ubi breve Dñi Regis non curric  
Et ꝑet' hꝛe Dñi Regis Constabular' Dñi  
Regis Doboꝝum ac Custos Quinqz Portuꝝ  
ꝑdict sive esus locumteneꝝ ibm dirigend ad  
certificand utrum heatur aliquod tale Record  
necne Et ei conceditur &c. Ideo ꝑcept' est  
ꝑlat Constabular' Custos Quinqz Portuꝝ  
ꝑdict sive esus locumteneꝝ ꝑ ꝑmissis certis  
ficand Quod mand' nunc Masoz' & Ball es  
jusdem Wille de S. & Sociis suis qđ scrus-  
tat' Rotulis & al' memorand Record de tem-  
poꝛe ꝑdict nup Masozis & Ballivi in custos  
sua existend Recordum ꝑdict cum oĩbus Res-  
coro ill' tanger' eidem Constabular' & Custodi  
Quinqz Portuꝝ ꝑdict sive esus locumteneꝝ  
mitt' indilate Et quod idem Constabular' Cu-  
stos Port' ill' sive esus locumteneꝝ Record  
illud coram Justic' nꝛis hic in quinden W.  
ꝑt' futur' heat, &c. ut idem Justic' hic facere  
valeant in ꝑremissis ꝑut de jure & secundū  
Legem & consuetud' regni Regis Angl' fuerit  
faciend Et qualiter, &c. Scire fac' hic ad  
eundem terminu', &c. Vide Rast. Entr. 169.  
Et Certiorari inde ibidem.

Bar in Debt, Nul tiel Record' & Certiorar'  
Camerar' Cestr',

¶ Action non, quia dic' quod non hetur aliquod tale Record' recuperationis Debi & Dampnozū pdict' in pdict' Cur' de Recordo pdict' Dñe R. Regine Dotisse Angl' &c. remanend' qual' pdict' T. supius allegavit. Et hoc, &c. Unde, &c.

Repl'.

¶ Precludi non, quia dic' quod habetur tale Record' recuperationis Debi & Dampnozū pō in pdict' Cur' de Recordo pdict' Dom' R. Regine Dotisse Anglie, &c. remanend' quale idem T. supius allegavit & hoc parat' est verificare p' Record' illud, &c. Sup' quo pdict' T. dic' quod H. pdict' ubi pdict' Record' recuperationis Debi & Dampnozū pdict' jam residet est infra Com' H. pdict' Palaciū Cestr' ubi h're de Dom' Regis non currit Et pet' h're Dñi Regis Camerario Com' Pal' Cestr' pdict' sive ejus locum ibm tenend' dirigend' ad certificand' Dño Regi utrum habetur aliquod tale Record' recuperationis Debi & Dampnozū pō qual' pdict' T. supius allegavit necne, Ideo pcept' est Camerar' pdict' Com' Pal' Cestr' sive ejus locum ibm tenend' quod p' pmissis certificand' p' h're Domini Regis sub sigillo ipsius Domini Regis Com' Pal' sui presdict' debe' conficiend' mandari fac' p'fat' R. Dño J. Barōn' de C. Senlo pdict' Cur' de Recordo pdict' Dñe R. Regine Dotisse Angl', &c. quod scrutat' Rollis & al' memorandis pdict'

Poict Cur de Record pfať Dñe R. Regine  
 Dotisse Anglie, &c. tent' apud H. Poict p-  
 dicto 7 die Decembz' Anno Regni dicti Dñi  
 Regis nunc primo supradicto coram ipso eod-  
 dem Señlo quid de pō Record recuperationē  
 Debiti & Dampnozū pō in eisdem invenes-  
 rit pfať Camerat' sive ejus locum tenen' ad  
 certum diem citra diem Lune p' post tres  
 sept' Sēi Mich p ipsum Camerariū sive es-  
 jus locum ihm tenen' et in ea parte limi-  
 tand' plene & integre certificet Et quid eidem  
 Camerario sive ejus locum tenen' de Record  
 pō p pō Señlum certificabitur idem Came-  
 rarius sive ejus locū tenens dic' Dño Regi  
 apud Westm pō die Lune p' post Poict  
 tres sept' Sēi Mich mittat unacum hī dicti  
 Dñi Regis sibi inde direct', &c. Vide Clif's  
 Ent. 148.

Aliter & Certiorari Majori & Ballivis Villæ.

¶ Et Poict W. ven', &c. Et dic' quod  
 Poict A. Actionē non, quia dic' quod non ha-  
 betur tale Recordum recuperation' Debi & Damp-  
 nozū pō quale idem A. in Parr' sua pō  
 supius allegavit Et hoc parat' est verificare,  
 &c. Unde pet' judic', si, &c.

Et Poict A. dic' quod habetur tale Record  
 recuperationē Debi & Dampnozū Poict quat  
 idem A. in Parr' sua Poict supius allegavit  
 Et hoc parat' est verificare Et pet' hīe Mas-  
 sori & Ballivis Poict de W. dirigend' ad has  
 vend'



hend Record p'dict coram Dño Rege apud  
 W. (tali die, &c.) sup quo p'cept' est Ma-  
 jori & Ballivis Wille p'dict quod Record p'd  
 quod, &c. habeant coram Dño Rege apud  
 W. in p'dict die, &c. Idem dies dat' est  
 partibus p'dict ibm, &c. Vide Rast. Ent.  
 547.

✱ *Note*, To this Action upon a Recovery,  
 the usual and general Plea is *Nul tiel Re-*  
*cord'*. Which being a particular Entry, I  
 shall set down several necessary Precedents  
 thereof.

*Nul tiel Record in an Inferior Court placitat'*  
*in Communi Banco.*

Repl' qd' ha-  
 betur, &c.

¶ Et p'dict Def. &c. quando, &c. Et die  
 quod p'dict quer' Action non, &c. Quia die  
 quod non habetur tale Record recuperationis p'd  
 61 s. & 8 d. vers' ipsum Def. in Cur'  
 Dñi Regis de C. Civit' R. p'dict put p'dict  
 quer' p' Parr' suam p'dict supius suppon' Et  
 hoc, &c. Unde, &c.

Et p'dict quer', &c. p'cludi non, &c. quia  
 die' quod habetur tale Record recuperationis p'd  
 61 s. 8 d. vers' p'dict Def. in p'dict Cur'  
 dicti Dñi Regis de C. Civit' R. p'dict  
 qual' idem quer' supius allegabit Et hoc pa-  
 rat' est verificare ubi quando ac put Cur'  
 Regis hic considerabit Et p' eo quod Record  
 p'dict Recuperationis in Custod nunc Wic' Civit'  
 R.

R. pōict existit idem quer' per' breve ejusdem Nul tiel Re-  
 Dñi Regis eisdem nunc Wic Civit' R. di- cord.  
 rigend' ad certificand' Justic' hic utrum tale  
 habetur Recor'd recuperacōi illi necne Et ei  
 conceditur, &c. Ideo pcept' est eisdem nunc  
 Wic Civit' R. quod scrutat Rotulis & al  
 Memorand' Recor'd de tempore pōict nuper  
 Wic in Custod' ipsorū nunc Wic existēd' cons-  
 tare fac' Justic' hic (tali die) utrum heatur  
 in custod' sua tale Recor'd recuperacōis pōict  
 quale pōict' quer' p' Part' suam pōict' supi-  
 us allegavit necne Idem dies dat' est parti-  
 bus pōict' hic, &c. Vide Bro. Vad. 244.

Aliter in Cur' inferior' placitat' in Banco  
 Regis.

II. Et pōict P. & J. dicunt quod ipsi per  
 aliqua p' pōict C. M. quoad pōict 327 l.  
 8s. & 8 d. supius p'litando allegat' ab Accone  
 sua pōict' inde vers' ipsum R. habend' p'cludi  
 non debent quia dic' quod non habetur aliquod  
 tale Recor'd adjudicacōi Execucōi vers' p'fat'  
 P. & J. p' pōict 327 l. &c. in pōict Cur'  
 dicti Dñi Regis coram Majore & Ald'is pō  
 Civit' L. remanend' qual' pōict R. supius  
 p'litando allegavit Et hoc, &c.

Et pōict R. dic' quod habetur tale Recor'd  
 adjudicacōi Execucōi vers' p'fat' P. & J.  
 pro pō 327 l. &c. in pō Cur' dicti Dñi Regis  
 coram nunc Majore & Ald'is Civitat' pō re-  
 manend' qual' ipse idem R. supius p'litando  
 allegavit

Issue join sur  
al placitat'.

allegabit Et hoc parat' est verificare p Re-  
cord illud Et dictum est pstat R. p Cur dicti  
Dñi Regis nunc hic quod habeat Record illud  
coram Dño Rege apud Westm die Mercurii  
pr' post quinque septiman Pasche sub pculo  
suo Et quoad triand Crit' pñ int' partes pñ  
superius junct' p Patriam triand' Precept' est  
hic quod Venire fac' coram Dño Rege a-  
pud Westm & ad pstat Termin' xii, &c.  
Et qui nec, &c. Ad Recogñ, &c. Quia tam,  
&c. Idem dies dat' est partibus pñ ibm, &c.  
Vide Tho. Entr. 438.

*Non damnificat'* pleaded to a Bond to save  
harmless.

Replic' by a Recovery in London.

Rejoinder by *nul tiel Record'*.

Surrejoinder *quod habetur, & Breve agard  
Majori, &c.*

A. Et pñ W. dic' quod non habetur aliquod  
tale Record recuperatōis qual' idem C. superius  
allegavit Et hoc parat' est verificare Unde ut  
prius pet' judic' Et quod pñ C. ab Actione  
sua pñ vers' ipsum W. habend' pcludatur,  
&c.

Et pñ C. dic' quod habetur tale Record  
recuperatōis pñ quale ipse superius allegavit  
Et hoc parat' est verificare Ubi & quando &  
put Cur cons' Et pñ W. filit' Et super  
hoc pñ C. dic' quod Mayor Alderman &  
Wic' London' int' alia Libertates Franchesi-  
as & Privilegia Civibus London' p divers  
los



fos nup Reges Angl' Progenitores dicte Dñe  
Regine nunc concels' & p eandem Dñam Res-  
ginam confirmat' talem hent libertatem quod  
recordare debent singula Recorda coram eis  
pl'itat' fact' vel habit' ore tenus & non aliter  
Et pet' p eo, quod Record' recuperat' p'd in  
custod' Major' Alderman' & Vic' London' ex-  
istit breve Dñe Regine eisdem Majori Al-  
derman' & Vic' dirigend' ad certificand' Ju-  
stic' hic utrum tale habetur Record' necne  
Et ei conceditur, &c. (the Return) Ideo p-  
cept' est Majori Alderman' & Vic' London'  
quod scrutat' rotulis & al' Memorand' Re-  
cord' de tempore p'd nup Vic' in custod' sua  
Justic' hic certificent an sit tale Record' re-  
cuperat' p'd put p'd C. p Repl' suam p'd  
supponit necne Idem dies dat' est partibus  
p'd hic, &c. Vide 1 Brown 194. And see  
there the Certiorari to the Mayor of London,  
&c. See also *Raft. Ent.* 212. and 547.

Nul tiel Record' Bille in Banco Regis.

*N.* Acto non, quia dic' quod non hetur ali-  
quod tale Record' Bille p'd in Cur' dicti Dñi  
Regis coram ipso Rege de Recordo reman-  
ent' quat' p'd J. sup'ius pl'itando allegabit Et  
hoc parat' est verificare Unde pet' judic' & de-  
tum suum p'd unacum Damynis suis occasione  
detent'ion' debi illi sibi adjudicari, &c.

Precludi non, quia dic' quod habetur tale Repl'.  
Record' Bille p'd in Cur' dicti Dñi Regis co-  
ram ipso Rege de Recordo remanent' quat' ip-  
se idem J. sup'ius pl'itando allegabit put pas-  
tet inter filat' Willaz in Cur' ipsius Dñi  
Regis coram ipso Rege de Recordo assilat' de  
p'd

pō Termino Pasche anno 15 supradicto Et hoc parat' est verificare p Recordū illud. Et per' quod Recordū illud p Cur' dñi Dñi Regis nunc hic videatur & inspiciatur Et quia Cur' dñi Dñi Regis nunc hic de iudicio suo de & sup' pmissis reddend' nondum advisatur dies inde dat' est partibus pō coram Dño Rege apud Westm' Usque diem, &c. p'or' post, &c. de iudicio suo de Crit' ill' audiend' Co quod Cur' dñi Dñi Regis hic inde nondum, &c. See Thomp. Ent. 437.

Aliter in Coi' Banco placitat'.

ff. Ad quas quidem tres septimanas hic veni tam pō J. S. qm pō R. L. p' attozū suos pō Et pō R. ut prius defend' vim & injur' quando, &c. Et dic' quod pōict J. S. Accōnem suam pō vers' eum habere non debet, Quia dic' quod non hetur aliquod tale Recordū de recupaōne debi & dampnoz pō vers' ipsum R. L. p'out pō J. S. p' Parr' suam pō supius suppon' Et hoc parat' estificare Unde per' iudiciū si pōict J. S. Accōnem suam pō vers' eum here debeat, &c.

Dies dat' ad  
inferend'  
Record'.

Et pō J. S. dic' quod ipse Precludi non, quia dic' quod hetur tale Recordū recupaōnis Debi & Dampnozū pō vers' pō J. S. quale pō J. S. p' Parr' suam pō supius suppon' & hoc parat' est verificare p Recordū illud Ideo dictum est eidem J. S. quod heac hic in Crast' Ascensionis Dñi Recordū illud sub suo piculo, &c. Et idem dies dat' est partibus pō hic, &c. Ad quem diem hic veni tam pōict J. S. quam pō R. L. p' Acc' suos pō Et Dñs Rex mand' Justic' hic h're suum



suum cū eidem Justic' hic direct' ejus tes-  
 noz sequitur in hec verba. Ed'us, &c. Re-  
 cord & Process' de quibus in h'i sit men-  
 sequitur in hec verba, Adhuc p'lit', &c. Et  
 sup hoc p'dict' J. S. petit Judicium & Cre-  
 cuconem de Debo & Dampnis p'dict' vers' Cur' advisa-  
 p'dict' R. sibi reddi Et quia Justic' hic de re vult.  
 & sup omnibus & singulis p'missis advisare  
 volunt antequam Judic' & Crecucon' inde red-  
 dant dies dat' est tam p'fat' J. S. quam p'd  
 R. hic in Octab' S'c'e Trin' in statu quo  
 nunc, &c. Vide Rast. Ent. 194.

Aliter.

¶ Et p'dict' T. D. p S. W. Actorū suū  
 vend, &c. Et dic' quod p'd J. M. Accōn non,  
 quia dic' quod non habetur aliquod tale Re-  
 cordum p'dict' recupacon' p'dict' 14 l. put idem  
 J. p Parr suam p'dict' supius suppon' Et  
 hoc parat' est verificare Unde pet' judic' si  
 p'd J. Accōn, &c.

Et p'd J. M. dic' quod ipse Precludi non  
 quia dic' quod h'etur tale Record' recupacon'  
 p'dict' 14 l. quale idem J. M. p Parr suam  
 p'dict' supius suppon' Et hoc parat' est veri-  
 ficare p Record' illud Super quo dic' est p  
 Cur' hic p'fat' J. M. quod habeat hic a die  
 Pasche in xv dies Record' p'dict' sub suo pi-  
 culo, &c. Idem dies dat' est partibus p'dict' Quer' libo-  
 hic, &c. Ad quem diem hic vend tam p'dict' rat Record'  
 J. M. quam p'd T. D. p Att' suum p'd Et sub pede si-  
 idem J. habet & liberat Justic' hic Record' p'd gil' Canc'.  
 sub



sub pede sigilli Dñi Regis de Cancellaria  
sua hic missum. virtute hñs Dñi Regis de  
Mittimus Justic' hic direct' Que quidem Breve  
& Record reman' hic int' Record sine die affi-  
lat', &c. Quibus quidem Bd & Record lectis  
& auditis satis constat Cur' hic Recordum  
illud fore idem Recordum in Part' p'd spec'  
Ideo cons' est quod p'd J. M. recuperet vers'  
p'd T. D. debum suum p'dict' & Dampna  
sua occasione detention' Debi ill' ad 100s.  
eidem J. ex assensu suo p' Cur' hic' adjudi-  
cat' Et p'd M. in Pia, &c. Vide Rast. Ent.  
194.

Narr' in Debito sur recuperation' in B. R. Bar  
per nul tiel Record', &c.

ñ. Quando, &c. Et dic' quod non hetur a-  
liquod tale Record' recuperationis Debi & Dampn'  
p'd qual' p'd C. superius narrando allegavit  
Et hoc, &c. Unde, &c.

Replie'.

Precludi non debet quia dic' quod hetur ta-  
le Record' recuperation' Debi & dampn' p'd  
in Cur' dicti Dñi Regis coram ipso Rege a-  
pud Westm' residen' qual' idem C. superius nar-  
rando allegavit Et hoc parat' est verificare p'  
Record' illud put patet Termino Pasche An-  
no regni Dñi Jacobi nunc Regis Angl' sex-  
to Rotulo 521. Et pet' quod Term' & Ro-  
tul' ill' p' Cur' Dñi Regis hic videantur  
& inspiciantur, &c. Et quia necesse & conve-  
nient' sit quod Record' p'dict' videatur & inspi-  
ciatur priusquam Judicium in hac parte reddat'  
sit Dies p'inde dat' est p' Cur' hic coram  
Dño Rege apud Westm' usq' diem Wene-  
ris prox' post quinden' Pasche ac sibi' idem  
dies

dies dat' est partibus p̄dict' ibidem, &c. Ad quem diem coram Dño Rege apud Westm̄ ben' partes p̄s p̄ Att' suos p̄s sup quo vis' & p̄ Cur' dicti Dñi Regis hic plentius intellectis omnibus & singulis Premissis maturaq; deliberatione inde h̄ita de eo quod videtur Cur' Dñi Regis hic quod habetur tale Record' recupaçon' Debi & Damnoꝝum p̄s in Cur' dicti Dñi Regis hic coram ipso Rege apud Westm̄ residen' qual' idem C. supius narrand' allegavit Ideo cons', &c. Et Judic' verbatim ut in Debito pro Quer'. Vide Rob. Ent. 204.

In Debt, Plaintiff pleads Performance of Covenants in an Indenture for Payment made after the Bond. Defendant replies by way of Estoppel by a Recovery of the Money in the Common Pleas upon Verdict, &c.

Rejoinder by *Nul tiel Record' Loquela prædict'.*

A. Et p̄dict' J. p̄testando quod p̄litum p̄s T. ac materia in se content' minus sufficien' in Lege existit ad Acconem suam p̄dict' manutenend' p̄ p̄litū dic' quod non habetur aliquod tale recordum Loquela p̄dict' in' p̄fat' T. & ipsum J. qual' p̄dict' T. supius allegavit Et hoc parat' est verificare Unde per' judicium Et quod p̄dict' T. ab Accone sua p̄dict' habend' p̄cludatur, &c.

(Part IV.)

S

Et

Et p̄dict L. dic' quod habetur tale recoz-  
 dum Loquele p̄dict int' ipsum L. & p̄fat' J.  
 qual' ipse supius allegavit Et hoc parat' est  
 verificare ubi & quando ac put Cur' cons',  
 &c. Ideo idem L. habeat hic a die Scti  
 Martini in 15 dies recoz'd p̄dict suo piculo,  
 &c. Idem dies dat' est partib' p̄dict hic,  
 &c. Ad quem diem hic vend tam p̄dict  
 L. quam p̄dict J. p' Attoz'd suos p̄dict Et  
 Dñs Rex mandavit Justic' suis de Banco  
 hic breve suum ctm in hec verba. Venr', &c.  
 Tenor recoz'd & p̄cess' unde brev' p̄o fit men-  
 tio sequitur in hec verba. p̄lita apud Westm  
 coram Dño Rege de Termino Pasche, &c.  
 (recitando totum recoz'du' verbatim, &c.) sup  
 quo idem L. J. pet' judic' & debum suum  
 p̄dict unacum dampnis suis occōne detencōid  
 debi ill' sibi adjudicari, &c. Et quia Justic'  
 hic se advisare voluit, &c. Vide Thomp.  
 Ent. 176, 177.

Bar al Scire fac' Qd' Def. fuit Arrest' sur  
 Ca' sa' & detent' quousque Debt fuit sa-  
 tisfie.

¶ Et p̄dict J. M. p' C. P. Attoz'd suu' vend  
 & dic' quod p̄dict Dña M. C. Execucōid su-  
 am vers' eum de deho & dampn' p̄dict virtus  
 re judicii & recupacōid p̄dict habere non des-  
 het quia dic' quod post reddicōid judicii p̄dict  
 p' deho & dampn' p̄dict unde p̄dict Dña M.  
 execucōid vers' ipsum J. M. modo petit, ip-  
 se idem J. scilicet 30 die Julii Anno Dñi  
 1660. apud L. videlicet in Paroch' Beate  
 Marie



Marie de Arcubus in Warda de C. Lond  
don virtute cuiusdam hris de Cap' ad satisfaciend  
Wic' L. direct' capi' fuit & in prius  
na Dñi Regis sub custod' Wic' L. pōict  
detent' fuit quousq; debum & dampna pōict  
inde plenar' satisfact' fuer' p'ut p' idem h're  
& retord' inde in Cur' dicti Dñi Regis nunc  
coram ipso Rege de Recordo affilat' existend  
plenius liquet & apparet p' quod Idem J. dic'  
quod ipse rōne p'miss' cum aliqua execuōm  
p' debito & dampnis pō modo onerari non de-  
bet. Et hoc, &c. Unde pet' judic' si pōict  
Dña M. execuōm de debito & dampn' ill' seu  
aliqua inde parcelle modo & forma pōict vers'  
eum habere debeat, &c.

Et pōict' M. dic' quod ipsa p' aliqua p' pō Repl' per  
J. supius p'litando allegat' ab executione sua nul' tiel Re-  
vers' ipsum J. p' dampn' pōict' habend' p' cord'.  
cludi seu retardari non debet quia dic' quod  
non habetur aliquod tale h'rebe de Cap'  
ad Satisfaciend' vers' ipsum J. in pōict' Cur'  
dicti Dñi Regis nunc coram ipso Rege de  
Recordo remanend' affilat' quale pōict' J. su-  
pius p'litando allegavit Et hoc, &c. Unde pet'  
judic' & execuōm vers' pōict' J. de debito &  
dampn' pōict' iuxta vim formam & effectum  
recupaciōm pōict' sibi adjudicari, &c.

Et pōict' J. dic' quod habetur tale h'rebe Rejo'. quod  
de Cap' ad Satisfaciend' vers' ipsum J. in habetur tale  
pō Cur' dicti Dñi Regis nunc hic coram Record'.  
ipso Rege de recordo remanend' affilat' quā  
ipse idem J. supius placitando allegavit prout  
patet in filac' B'rebium de Cap' ad Satis-  
faciend' recognabil' coram dicto Dño Rege a-  
pud Westm' de Terminis S'ci Mich' Anno

regni Dñi Regis nunc 12 de recordo affilat'  
 Et hoc parat' est verificare p recordo Brevis  
 pñ Et pet' quod Recordo illud p Cur dicti  
 Dñi Regis videatur & inspectetur Et sup  
 hoc dictum est pñar' J. p Cur hic quod ha-  
 beat recordo pñ Brevis de Cap' ad Satisfac-  
 tiend coram Dño Rege apud Westm die,  
 &c. pñor' post, &c. periculo suo, idem dies  
 dat' est partibus pñict ibm, &c. Vide Thomp.  
 Ent. 282.

¶ Nul tiel Breve de Habere fac' posses-  
 sion pñicat' al Scd fa'. Rejoinder tale Bre-  
 ve remanet cum custode Brebium Et hoc,  
 &c. Et dictum est, &c. Vide Thomp. 286.

¶ Nul tiel Recordo Brevis de Elegit &  
 Inquisition & Rejoinder quod hetur. Vide  
 Thes. Brev. 267. Judic' pro quer' Et execu-  
 tio adjudicat'.

¶ Def. protestando quod non habetur tale  
 Recordo Judicii & recuperation vers' T. ad s'  
 A. M. nec Recordo Judic' inde sup Scd fa'  
 pro pñito Nul tiel Recordo de Ca' sa' vers'  
 pñ T. ads' Quer'. 2 Browne 98.

See after *Nul tiel Record' Ut'*.

Def. in Communi Banco placitat auter Action port in C. B. pur le dit trans'.

Repl' Nul tiel Record' in Cur' Domini  
Regis de Banco.

¶ Et p'dict' S. dic' quod ipse p aliqua p  
p'dict' J. & G. pallegat' ab Actione sua p'dict'  
vers' ipsos J. & G. h'nd pcludi non debet  
quia dic' quod non h'etur aliquod tale Record'  
recupation' in Cur' d'ci D'ni Regis de Banco  
hic remaneid qual' iidem J. & G. supius  
allegaber' & hoc parat' est verificare Unde  
pet' judic' & dampna sua occ'sone trans' Ins-  
ult' & Imprisonament' p'dict' sibi adjudicari, &c.

Et p'dict' J. & G. dic' quod habetur tale  
Record' recuperation' in Cur' d'ci D'ni Regis  
de Banco hic remaneid qual' iidem J. & G.  
supius allegaber' & hoc parat' sunt verificare  
p record' illud Et pet' quod record' ill' p Ins-  
ult' hic videatur & inspiciatur, &c. Et quia Record'  
ill' modo hic in Cur' parat' non habent Dicit'  
est p'fat' J. & G. quod record' ill' habeant hic  
a die Pasche in quindecim dies Idem dies  
dat' est partibus p'dict' hic, &c. Vide 2 Lut. Ent.  
245.



Nul tiel Record' recuperation' in Cur' Domini Regine, &c. Per Replik'.

¶ Et pōict R. dic' quod ipse p aliqua palleget' ab Actione sua pōict hend' pcludi non debet, Quia dic' quod non hetur aliquod tale Recordum pōict recuperaōn' debi & dampnozū pōict in Cur' pōict Dñe Regine coram ipsa Regina remanend' qual' pōict T. & T. supius plicando allegaver' Et hoc parat' est pificare Unde per' iudiciū & debum suū pōict unacum dampnis suis occōne detenōn' debi illi sibi adjudicari, &c.

Nil dic' ad  
Repl'.

Judic' pro  
Quer'.

¶ Et pōict T. & T. nihil ad Repl' pōict R. supius plicat' dic' nec aliquid aliud in loquelā pōict ullius dic' p quod idem R. remand' vers' pstat' T. & T. inde indefens' Ideo cons' est quod pōict' R. recuperet vers' pstat' T. & T. debum suū pōict & dampna sua occōne detenōn' debi illi ad 50 s. eidem R. ex assensu suo p Cur' hic adjudicat' de bonis & catallis que tuer' pstat' J. tempore mortis sue in manibus pōict T. & T. administrand' existend' si tant' inde habeant Et si non habeant tunc dampnū pōict de bonis & catallis ipsorum T. & T. ppr' levand' Et pōict T. & T. in Mia, &c. Vide Co. Ent. 269.

Vide Pul tiel Record' recuperaōn' dampnorum in Cur' Dñi Regis de Banco Repl' quod hetur Et Breve un' Justic' de Banco ad certificand' record', &c. Clerk's Ass. 79.

Sur

Sur Escape, Nul tiel Record' recuperation' & commission' Custod Def.

¶ Action non, Quia dic' quod non hetur aliquod tale Record' recuperation' dampnorum p'dict' vers' p'dict' J. B. & commission' ipsius J. custod' ipsius Def. neque record' recuperation' dampnorum p'dict' vers' p'dict' R. & F. & commission' ipsius R. custod' ipsius Def. put p's Duer' p' Parr' suam p'dict' sup'ius suppon' Et hoc parat' est verificare Unde pet' judic' si Action', &c.

¶ Precludi non, Quia dic' quod habetur tale Record' recuperation' dampnorum vers' p'fat' J. & B. & commission' ipsius J. & tale Record' recuperation' dampnorum vers' p'fat' R. & F. & commission' ipsius R. & custod' p'dict' Def. put idem Def. p' Parr' suam p'dict' sup'ius suppon' Et hoc parat' est verificare p' record' illud, &c. Vide Bro. Vad. 257. Replie'.

Nul tiel Record' al' Scire fac' in Cur' de Communi Banco.

¶ Et p'dict' J. dic' quod p'dict' M. execu- Replie'.  
tion' vers' eum de p'dict' Centum libz' de de-  
bo p'dict' ac de dampnis p'dict' habere non de-  
bet, Quia dic' quod non habetur aliquod  
tale record' recuperation' p'dict' Centum libz' de  
debo

debo p̄dict ac dampnū p̄dict p̄dict A. vers' ipsum J. in p̄dict Cur' dicti Dñi Regis nunc hic residen' qual' p̄dict A. p̄ Breve suum p̄d supius suppon' Et hoc parat' est v̄ficare An- de per' iudic' si p̄dict A. execucon' vers' eum de p̄dict Cent' libz' de deho p̄dict ac de damp- nis p̄dict habere debeat, &c.

Et p̄dict A. dic' quod ipse p̄ aliqua palle- gat' ab Execucone sua p̄dict, &c. vers' p̄fat' J. de p̄dict Centū Libz' de deho p̄dict ac de damp- nis p̄dict virtute recupacon' p̄dict Centum Libz' de debito p̄d ac dampnis p̄dict p̄ ip- sum A. vers' p̄fat' J. in p̄dict Cur' dicti Dñi Regis hic residen' qual' idem A. supius alle- gavit put' patet Termino Sancte Trin' An- no Dñi 1659. rotulo sercentesimo Et per' quod Terminus & Rotulus illi' videantur & inspiciantur Et quia Iustic' Dñi Regis hic se advisare volunt de & super inspecion' & examinacon' Recordi p̄dict p̄dict A. supius allegat' priusquam Iudic' inde reddant dies dat' est partibus p̄dict' hic usque a die Sancti Martini in quindecim dies ad inspiciend' & exa- minand' Record' p̄dict' eo quod idem Iustic' hic inde nondum, &c. Ad quem diem hic ven' tam p̄dict A. quam p̄dict J. p̄ Acc' suos p̄dict ac sup' hoc v̄slo inspecto ac per' Iustic' hic plene examinat' Termino & Ro- tulo p̄dict videtur eisdem Iustic' hic quod ha- betur tale Record' recuperacon' p̄dict Centum Libz' de debito p̄dict ac dampnorum p̄d per' p̄d A. vers' p̄fat' J. in p̄dict Cur' dicti Dñi Regis nunc hic residen' qual' idem A. superius allegavit Ideo cons' est quod p̄dict A. habeat execucon' vers' p̄fat' J. de p̄dict Cen- tū Libz' de deho p̄dict ac de dampnis p̄dict', &c.

Habetur Re-  
cord' & Ju-  
dic' pro  
Quer'.



Ar. Vide Officin. Brev. 279. The like in  
Bro. Vad. 455, &c.

*Upon a Scire fac' for Arrears of an Annuity,  
Defendant pleads Nul tiel Record.*

¶ Et p̄dict C. dic quod p̄dict A. execu-  
tionem vers' eum de p̄dict 6 l. & 5 s. de  
Arrerag' annui reddit' p̄dict habere non de-  
bet quia dic quod non habetur aliquod tale  
Record p̄ quod liquere potest quod p̄dict A.  
recuperavit vers' p̄fat' B. nuper Rectorem,  
&c. annuū reddit' p̄dict put in p̄dict W̄ebi  
de Scd fa' sit menē Et hoc, &c. Unde pet'  
judic' si p̄dict A. executionē versus eum de  
p̄dict 6 l. & 5 s. de Arrerag' Annuū reddit'  
p̄dict habere debeat, &c.

Et p̄dict A. dic quod p̄dict C. ad dicendū Estoppel per  
vel allegandū quod non habetur aliquod tale Record in  
Record p̄ quod liquere potest quod p̄dict A. Cur'.  
recuperavit vers' p̄fat' B. nup Rectorem, &c.  
annuum reddit' p̄dict admitti non debet, Quia  
dic quod tale Record habetur put in p̄dict  
W̄ebi de Scd fa' sit menē coram Justic' hic  
residenē videlicet Termino Sancti Hillarii An-  
no regni Dñi Regis nunc quarto Rotulo  
338. Super quo viso illo Rotulo & p̄ Ju-  
stic' hic plenius intellect' videtur ac satis con-  
stat eisdem Justic' hic quod habetur Record p̄  
quod plene liquet quod p̄dict A. recuperavit vers'  
p̄fat' B. nup Rectorem, &c. annuum reddit'  
p̄dict put in p̄dict W̄ebi de Scd fa' sit  
menē Ideo cons' est quod p̄dict A. heat exe-  
cutionē

cutiōd vers' p̄fat' C. de p̄s 6 l. & 5 s. de  
Arrearag' Annuī reddit' p̄s, &c.

Vide Officin. Brev. 341.

Aliter al Scire fac'.

¶ Ad quem diem coram Dñā Regina apud  
Westm̄ vend p̄s R. B. in p̄p̄' personā sua  
Et J. C. viz. tenens 20 Acr̄ terre in B.  
p̄ed in Com̄ C. de quibus p̄s A. tempore quo  
supponitur Iudiciū p̄s vers' ipsum A. red-  
ditum fuit leisit' quarto die sollemnit' ex-  
act' iuxta p̄monitiōem sibi inde fact' in  
p̄p̄' p̄sona sua sicut vend & dic' quod p̄s R.  
B. Executiōd suam de debito & dampnis p̄s  
versus eam habere non debet quia dic' quod  
nul' tal' habetur Recordum Executiōd p̄dict'  
adjudicat' vers' p̄fat' A. quale p̄ Breve p̄s  
supponitur Et hoc, &c. Unde pet' Iudiciū  
Et quod ipsa & tēta p̄ed de Executiōd  
p̄ed exonerentur, &c.

Vide Hansard's Entries 108.

Nul tiel Record al Scire fac' puis Ann' & jour' Nul tiel Re-  
in Banco Regis. cord.

ff. Dom' Rex, &c. (recitant breve & retorn  
de als Scire fac.) Ad quem diem coram Dño  
Rege apud Westm' ven' p'res Quer' in p'p'  
plona sua Et p'res Def. sic p'remonit' p' A.  
B. Attorn' suum ven' sup' quo p'res quer'  
et' Execution' vers' p'refat' Def. de de'ho &  
dampnis p'res' sibi adjudicari, &c. sup' quo  
p'res Def. dic' quod p'res Quer' execution' su-  
am vers' e'nd' de de'ho & dampnis p'res' ha-  
bere non debet Quia dic' quod non habet'  
Aliquid t're Recordum Recup'acionis de'bi &  
dampnorum p'res' qual' p' breve p'res' sup'ius  
supponit' Et hoc parat' est verificare Unde  
per' indic' si p'res' quer' execu'con' suam vers'  
id' de de'ho & dampnis p'res' habere debeat, &c.  
Et p'res' quer' dic' quod ipse p' aliqua per-  
p'res' Def. sup'ius placitando allegat' ab exe-  
cutione sua vers' e'nd' de de'ho & dampnis p'res'  
habend' p'cludi non debet quia dic' quod habet'  
le Record' recuperacionis de'bi & dampnorum  
p'res' qual' p' breve p'res' superius supponit'  
ut patet Term' Pasche Anno Regni Dñi,  
c. 14 Rotul' 2220. Et hoc parat' est ve-  
rificare p' Record' illud Et per' quod Termi-  
us & Rotulus ill' p' Cur' Dom' Regis hic  
videant' & inspiciant'. Et quia Cur' dicti  
Dom' Regis hic de iudicio suo de & sup' p'res-  
missis reddend' nondum advisat' Dies in-  
e dat' est Partibus p'res' coram Domino Re-  
ge



ge apud Westm̄ usq; diem, &c. p<sup>r</sup> post, &c. de iudicio suo de C<sup>it</sup> ill<sup>u</sup> audiens eo quod Cur<sup>ia</sup> Domini Regis hic inde nandum, &c. Ad quem diem coram D<sup>no</sup> rege apud Westm̄ veni tam p<sup>o</sup>dict<sup>us</sup> Quer<sup>ens</sup> in p<sup>o</sup>p<sup>r</sup> p<sup>o</sup>sona sua quam p<sup>o</sup>dict<sup>us</sup> Def. per Actiōem suam p<sup>o</sup>dict<sup>am</sup>. Et idem quer<sup>ens</sup> ostend<sup>it</sup> hic in Cur<sup>ia</sup> p<sup>o</sup>dict<sup>am</sup> Record<sup>um</sup> recuperationis p<sup>o</sup>dict<sup>am</sup> coram D<sup>no</sup> rege hic Terminō & Rotulo p<sup>o</sup>dict<sup>am</sup> vers<sup>us</sup> eid<sup>em</sup>. Quo lecto & per Cur<sup>iam</sup> dicti Domini Regis nunc hic plene exālat<sup>ur</sup> & intell<sup>ectus</sup> satis constat Cur<sup>iam</sup> Domini Regis hic Recordum illud fore Recordum recuperationis p<sup>o</sup>dict<sup>am</sup> in brevi p<sup>o</sup>dict<sup>am</sup> mentionat<sup>ur</sup>. Ideo cōs<sup>ens</sup> est quod p<sup>o</sup>dict<sup>us</sup> quer<sup>ens</sup> habeat Executionem suam vers<sup>us</sup> p<sup>o</sup>dict<sup>am</sup> def<sup>ectum</sup> de deb<sup>itu</sup> & dampnis p<sup>o</sup>dict<sup>am</sup> iuxta vim formam & effectum recuperationis p<sup>o</sup>dict<sup>am</sup>, &c. Vide Thomp. Ent. 289, &c.

Judic<sup>ium</sup> pro  
Quer<sup>ens</sup>.

Debt was brought in the Court of *Bristol* upon a Bond for 600*l*. The Defendant plead a Recovery in the King's Bench upon the same Bond. And the Plaintiff replies *Nul tiel Record*, &c.

Bar.

A. (Et p<sup>o</sup>dict<sup>us</sup> M. P. defend<sup>it</sup> vim & injuriam quando, &c.) Et dic<sup>it</sup> quod p<sup>o</sup>dict<sup>us</sup> F. B. & J. Actiōem suam p<sup>o</sup>dict<sup>am</sup> vers<sup>us</sup> eid<sup>em</sup> habere non debent. Quia dic<sup>it</sup> quod al<sup>ius</sup> scilicet Term<sup>inus</sup> Paschi Anno Regni dicti Dom<sup>ini</sup> Regis nunc 16. in Cur<sup>ia</sup> dicti Dom<sup>ini</sup> Regis nunc coram ipso Rege (eadem Cur<sup>ia</sup> apud Westm̄ in Com<sup>itatu</sup> M<sup>id</sup>l<sup>and</sup> tunc existēti) p<sup>o</sup>dict<sup>us</sup> F. B. & J. B. p<sup>o</sup> nōia F. B.

J. & A. K. nup Armig' modo Mil' p R. P.  
 Attoꝝ suū ven' & tunc pꝛuler' in eadem  
 Cur' quandam billā suā vers' pꝛat' W. P.  
 p nomen W. P. alias dict' William Pitt, of  
 Westleigh afore said, Gent. ad tunc in custod  
 Har' Harese Dñi Regis coram ipso Re  
 ge existen' de pꝛico debi Et in ven' pleg' de  
 ps' scilicet Joheḿ Doe & Ricūm Roe, p  
 quam quidem billā idem J. K. & A. K.  
 p pꝛict nōia J. K. & A. K. Armig' modo Mil'  
 querebant' de pꝛat' W. P. per pꝛict nōen  
 W. P. alias dict' (et.) in custod Har' Ha  
 rese sic ut pꝛert' existen' de placito quod red  
 deret eis sexcentas libras legalis monete Angl'  
 quas eis debuit & injuste detinuit p eo vī  
 delicet Quod cum pꝛict W. secundo die Pos  
 tem' Anno Domi 1657. apud Civit' B. pꝛ  
 in Corā ejusdem Civit' per quoddam scrip  
 tum suū Obl' sigillo ipsius W. sigillat'  
 Curieꝝ dicti Domini Regis tunc ibidem o  
 stens' cujus Bar' fuit eisdem die & Anno  
 cogit se teneri & firmit' obligari pꝛict J. &  
 A. in pꝛict 600 l. solvend' eisdem J. & A.  
 cum inde requisit' esset' Pꝛes tamen W. licet  
 sepius requisit', et. pꝛict' 600 l. pꝛat' J.  
 & A. aut eozum alteri ad tunc non solvisset sed  
 eis omnino contradixisset & tunc contradic' ad  
 dampnū ipsoꝝ J. & A. 50 l. Et inde  
 pꝛuxer' sectā, et. Posteaꝝ scilicet die Vene  
 ris pꝛ' post Crast' Sꝛe Trin' in Termino  
 Sꝛe Trin' tunc pꝛ' sequen' & jam ult' elaps'  
 usque quem diem pꝛict W. P. habuit licenc'  
 ad bill' pꝛict interloquend' & tunc ad res  
 pꝛond, et. coram Domi Rege apud Westm  
 ven' tam pꝛict J. & A. per Attoꝝ suū  
 pꝛes



p̄d̄ quam p̄dict̄ M. P. per J. V. Attoz̄  
 suum Et iidem J. & J. petier̄ quod p̄dict̄  
 M. ad Parr̄ suam p̄d̄ respond̄ super que  
 p̄dict̄ M. defend̄ vim & injur̄ quando, &c.  
 Et idem Attoz̄ p̄dict̄ M. dixit quod ipse  
 non fuit infoz̄m per eund̄ M. Maḡem suū  
 de aliquo respōs inde p̄ eodem M. eidem  
 J. & J. in Loquesa p̄dict̄ dand̄ Et nichil  
 aliud adunc dixit in Barram sive p̄clusionē  
 Actiō ipsoz̄um J. & J. p̄dict̄ per  
 quod iidem J. & J. reman̄ vers̄ eund̄  
 M. inde indefens̄, &c. Ideo adunc & ibidem  
 per eand̄ Cur̄ cons̄ fuit quod p̄d̄ J. & J.  
 recuperent vers̄ p̄fat̄ M. debū suū  
 p̄d̄ necnon 51 s. p̄ dampnis suis que susti-  
 nuer̄ tam occone detentionis debi ill̄ qua' p̄  
 mis̄ & custaḡ suis per ipsos circa sectam  
 suam in ea parte appōit̄ eidem J. & J. per  
 Cur̄ dicti Dom̄ Regis tunc ibidem ex assen-  
 su suo adjudicat̄ Et quod p̄d̄ M. P. esset  
 in mīa, &c. put per Recor̄ & Process̄ inde  
 in dicta Cur̄ dicti Domini Regis coram  
 ipso Rege residen̄ manifeste liquet & apparet  
 Et p̄d̄ M. P. ulterius dic̄ quod script̄  
 obl̄ p̄d̄ in Recor̄ iudicii recuperation̄ spec̄  
 unde iidem J. & J. R. debū p̄d̄ in forma  
 p̄d̄ recuperaber̄ & script̄ obl̄ p̄d̄ per p̄fat̄  
 J. & J. R. modo hic in Cur̄ plac̄ sunt  
 un̄ idemq̄ scriptum & non al̄ neq̄ diversū  
 Et hoc parat̄ est verificare Unde ex quo  
 iidē J. & J. R. debū p̄d̄ per ipsos superis  
 us modo pet̄t̄ in forma p̄d̄ jamdudum re-  
 cuperaber̄ idem M. per̄ iudic̄ si p̄d̄ J. & J. R.  
 (Recor̄do Iudicii & recuperacōi) p̄dict̄ in omni-  
 bus

Averments.



bus plen' suis roboze vigoze & effectu adhuc  
existenti) Action' suam p'dict' inde versus  
eū habere debeant, &c. Vide 1 Saund. 9.

Et sup hoc p'dict' F. & J. pet' licenc' ad  
replicand, &c. (vide 1 Saund. 92.) Et sup hoc  
idem F. & J. dicunt quod ipsi p aliqua p'als-  
legat' ab Actione sua p'dict' habend' precludi  
non debent Quia dic' quod non her' aliquod  
c'te Recordum de recupa'one debi p'dict' &  
dampnozū p'dict' vers' p'efat' Defend' W.  
put p'dict' W. per respon'sionem suam p'dict' *Nul tiel Re-*  
supius suppon' Et hoc parat' sunt verificare *cord'.*  
Unde pet' iudiciū & debum suum p'dict' sibi  
adjudicari, &c.

Et sup hoc p'dict' W. petit licenc' ad re-  
surgend, (&c.) Et sup hoc idem W. ut prius  
dic' quod habet' c'te Record' recupa'ōn' debi *Repl,*  
& dampnū p'dict' versus ipsum Def. quale idem *Qd' habet'.*  
W. supius placitando allegabit put p Record'  
inde residend' in Cur' Dom' Regis nunc coram  
ipso Rege apud Westm' de Term' Scē Trin'  
Anno Regni dicti Dom' Regis nunc 16 ple-  
nius liquet & apparet Sed quia Record' de  
recupa'one p'dict' residend' in Cur' Dñi Regis  
apud Westm' p'dict' in Cur' hic nunc iudi-  
cialiter haberi vel p'ferri non potest idem W.  
petit iudic' si Cur' nunc hic de & sup p'as-  
missis ulterius procedere velit, &c. Et super  
hoc dic' est p Cur' hic p'efat' W. quod  
habeat hic ad p' Cur' dicti Domini Regis  
Toll' Civit' p'dict' hic in Guilohald' Civit'  
p'dict' coram tam Wic' Com' Civit' p'dict'  
quam Ballivis p'dict' Major' & Comuniat'  
Civit' p'dict' secundum cons' Civit' p'dict' die  
June

Lune 16 die Decem<sup>r</sup> pr<sup>r</sup> futur<sup>r</sup> tenend<sup>r</sup> Res  
 cord<sup>r</sup> p<sup>r</sup>dict<sup>r</sup> p<sup>r</sup> p<sup>r</sup>dict<sup>r</sup> W. superius placitat<sup>r</sup> suo  
 peric<sup>r</sup>lo idem dies dat<sup>r</sup> est partibus p<sup>r</sup>dict<sup>r</sup> hic,  
 &c. The Defendant brings not in the Re-  
 cord at the Day, and several Continuances are  
 by dies Dat<sup>r</sup> until die Mercurii 11 die Aprilis,  
 &c. and then Day given until die Luna 28  
 Maii prox<sup>r</sup> futur<sup>r</sup>, &c. Et ab eandem Cur<sup>r</sup>  
 dictio die Mercurii 11 die Apr<sup>r</sup> Anno 18 su-  
 pradicto ut prefer<sup>r</sup> ten<sup>r</sup> Ordin<sup>r</sup>at<sup>r</sup> est per 28  
 andem Cur<sup>r</sup> hic quod nisi p<sup>r</sup>es W. inferret  
 hic in Cur<sup>r</sup> Record<sup>r</sup> illud ad p<sup>r</sup>es 28 die Maii  
 ut prefer<sup>r</sup> tenend<sup>r</sup> intret<sup>r</sup> iudicium in placito  
 p<sup>r</sup>es p<sup>r</sup> eisdem F. & J. Ad quam quidem  
 Cur<sup>r</sup> dicti D<sup>n</sup>i Regis Tolk<sup>r</sup> Civit<sup>r</sup> p<sup>r</sup>es in  
 Guibald<sup>r</sup> p<sup>r</sup>es coram p<sup>r</sup>esat<sup>r</sup> tam Wic<sup>r</sup> Com<sup>r</sup>  
 Civit<sup>r</sup> p<sup>r</sup>es quam Ballibis p<sup>r</sup>es Major<sup>r</sup> &  
 Communit<sup>r</sup> ejusdem Civit<sup>r</sup> secundum cons<sup>r</sup>  
 Civit<sup>r</sup> p<sup>r</sup>es p<sup>r</sup>edicto die Lune 28 die Maii  
 Anno 18 supradicto ten<sup>r</sup> ben<sup>r</sup> tam p<sup>r</sup>es F. &  
 J. quam p<sup>r</sup>es W. per Actoz<sup>r</sup> suos p<sup>r</sup>es  
 Et p<sup>r</sup>es W. modo hic ad hanc Cur<sup>r</sup> non  
 habet Record<sup>r</sup> p<sup>r</sup>es per ipsum superius ut p<sup>r</sup>es-  
 fert<sup>r</sup> placitat<sup>r</sup> sed inde defecit Et quia Cur<sup>r</sup>  
 hic de iudicio suo de & super p<sup>r</sup>emiss<sup>r</sup> red-  
 dend<sup>r</sup> nondum advisat<sup>r</sup> dies inde dat<sup>r</sup> est pars  
 tibus p<sup>r</sup>es hic usque ad Cur<sup>r</sup> dicti Domini  
 Regis Tolk<sup>r</sup> Civit<sup>r</sup> p<sup>r</sup>es hic in Guibald<sup>r</sup>  
 p<sup>r</sup>es coram p<sup>r</sup>esat<sup>r</sup> tam Wic<sup>r</sup> Com<sup>r</sup> Civitat<sup>r</sup>  
 p<sup>r</sup>es quam Ballibis p<sup>r</sup>es Major<sup>r</sup> & Com-  
 munitat<sup>r</sup> Civit<sup>r</sup> p<sup>r</sup>es secundum cons<sup>r</sup> Civit<sup>r</sup>  
 p<sup>r</sup>es scilicet die Mercurii 18 die Julii pr<sup>r</sup>  
 futur<sup>r</sup> tenend<sup>r</sup> de audiend<sup>r</sup> inde iudicio suo  
 Et quod Cur<sup>r</sup> hic inde nondum, &c. Ad  
 quam quidem Cur<sup>r</sup> dicti Domini Regis Tolk<sup>r</sup>  
 Civit<sup>r</sup> p<sup>r</sup>es hic in Guibald<sup>r</sup> p<sup>r</sup>es coram p<sup>r</sup>esat<sup>r</sup>  
 tam



ram Vic' Civitat' p̄ quam Wallibis p̄  
 Major' & Comunitat' ejusdem Civic' secun-  
 dum cons' Civic' p̄ p̄dicto die Mercurii 18  
 die Julii tent' ven' tam p̄ J. & J. quam  
 p̄ W. per Actorū suos p̄ Et super hoc  
 visis p̄missis & per Cur' hic plene intellect'  
 cons' est per eand' Cur' quod p̄ J. & J. res-  
 cuperent vers p̄ W. debum suum p̄ &  
 dampna sua occasione detent' debi ill' ad 4l. 2s.  
 eidem J. & J. ex assensu suo per eand' Cur'  
 hic adjudicat' Et p̄ W. in m̄ia, &c. (postea  
 scilicet, &c.) and so the Defendant brings a  
 Writ of Error in the King's Bench, upon the  
 Judgment in the Court of *Bristol*.

The Errors that were insisted on at the  
*Bar* were these two, *viz.* 1. That the Plain-  
 tiffs in the Inferior Court had prayed no  
 Damages in their Replication. 2. That the  
 Court had given Judgment upon the Failure  
 of the Record, whereas they ought to have  
 surceased their Proceedings, or at the least  
 the Plaintiffs ought to have demurred to the  
*Rejoinder*, and Judgment should have been  
 given upon the Demurrer, and these Errors  
 were argued for Three Terms.

And as to the first Error it was argued,  
 That the Replication was ill for Default of  
 paying Damages, and then the Plaintiffs ought  
 not to have Judgment; as in the Case of  
*Beard and Chambers, Cro. Eliz. 256.* But  
 that Point was over-ruled, for that it was on-  
 ly Matter of Form, and aided by the Statute  
 of General Demurrers.

(Part IV.)

T

As



As to the Second Point it was argued, That the Court ought to have surceased their Proceedings upon the Foreign Plea of the Record in the King's Bench, and ought not to have proceeded or given any Judgment, because it could not be tried; and cited *Stat. Glou. 12. 2 Inst. 324. Br. tit. Cause de remover Plea 41. 3 H. 4. 11. b. & 18. 32 H. 6. 26.* by Issue joined in a Forreign Plea the Court is ousted of Jurisdiction. But it was argued on the other Part, that the Record of the King's Bench might be removed by *Certiorari* out of Chancery, and transferred by *Mittimus* to the Court of *Bristol*, and so the Issue of *Nul tiel Record* might be tried there, and so the Plea not Foreign. And if it should be otherwise construed, Then all Actions in Inferior Courts shall be ousted by a Fiction, for in truth there is no Record in this Court as the Defendant had pleaded.——And to this it was answered for the Plaintiff in the Error, That no Record here in a Superior Court shall be removed out of such Court, and sent to an Inferior Court. *Cro. Car. 297. Luttrell's Case*, It was doubted, if a *Certiorari* to certifie a Record out of this Court to the Common Pleas, upon a *Nul tiel Record* pleaded there, was allowable; but if it had been to an Inferior Court, it could not have been without doubt as seems by the said Book, *Cro. 2. Car. 34.* This Court will not execute the Judgment of an Inferior Court removed by *Certiorari*. And as to the Objection of ousting the Jurisdiction of an Inferior Court by a Fiction, it was answered, That the Court might

might have compelled the Defendant to have sworn to the Truth of his Plea, or otherwise they might have entered a *Nil dicit* against him; and if he swear it, then there is no more Mischief than in the Cases before. But admitting that the Record might have been well removed to *Bristol*; yet it was argued, That there the Judgment given upon the Failure of the Record was erroneous, and without any Issue joined; for the Defendant in his *Rejoinder* says, There was such a Record, but he could not have it there, which is as much as to say, That he would not have it there; and then the Plaintiffs ought to have demurred, for there was no Issue joined by the Defendant; for if the Defendant would have joined Issue, he ought to have said in his *Rejoinder*, That there was such a Record, *Et hoc paratus est verificare per Record' illud*, as all the Precedents are: As in *Rastal's Entries Appeals en Mort* 5. *Conspiracy en Bar.* 3. *Debt en Gaoler* 2. *Debt en Recovery* 5. and all the Books. And for Default of Answerment the *Rejoinder* was ill, and the Plaintiffs ought to have demurred, and thereupon the Court ought to have given Judgment, and not upon the Failure of the Record. And the Court was of Opinion, That the Record in this Court might have been certified to *Bristol*; by *Certiorari* and *Mittimus*. But for the other Point *Kelynge*, Chief Justice, declared his Opinion, That there was not any Issue joined, *quam Curia non contradixit*. But when it was prayed, That the Judgment should be reversed; The Court affirmed the

Judgment against their own Opinions, *quod nota*, says the Reporter. *Vide* 1 Saund. 97, 98, 99.

*ff.* Debt sur Obl' Barr' quod und C. & Def. Obligat' fuer' quer' in deho p'dicto C. obiit Et quer' recuperabit iudicium in Banco Regis sup Obl' vers' Adm, & cepit eund in Executione qui existend in custod Nic lasseret Quer' p quod Nic cum consensu quer' p'misit eund ire ad largum. Repl' p'test, &c. p placito quod non p'misit Adm ire ad largum c'd consensu. Quer' tender Issue Et Def; demurr', 2 Bro. 62.

Recuperatio in Cur' Burgi de Gippo & Execuc'o inde placitat' in Barr' de Deb'o Et Repl' per nul tiel Record.

*ff.* Et p'd I. D. p I. B. Attornd suum ben & defend vim & injur' quando, &c. C dic quod p'd S. Actioni suam p'd vers' eum here non debet quia dic quod Burgus de G in Corn S. est antiquus Burgus Quodq' habet' & a tempore cujus contr' memor' homin non existit habet' quedam Cur' Domini Regis de Record p triation & termination omni Actioni personal' infra Jur' ejuldem Cur' surgen' mergen' & acciden' ten apud G. p'd coram Wallivis ejuldem Burg p tempore existend Quodq' post maritag' i



In forma p̄d̄ solempnizat' scilicet ad Cur'  
 Dom̄ Jacobi secundi nup̄ Regis tent' apud  
 G. p̄d̄ primo die Martii Anno Regni sui  
 quarto corā tunc Ballivis ejusdem Burgi  
 p̄d̄ S. implicasset eund' J. D. in placito Des  
 bi sup̄ Demand' p̄d̄ mille librarū affirmans  
 do p̄ placitum illud (& nichil p̄ter veritate)  
 in ea parte dicendo) quod scriptum illud faci'  
 fuit & deleberat' p̄ eund' J. D. eidem S.  
 infra Jur' ejusdem Cur', Taliter in eadem  
 Cur' sup̄ placitum ill' p̄cess' fuit quod postea  
 scilicet ad p̄d̄ Cur' de Recordo tent' ibidem  
 corā Ballivis p̄d̄ octavo die Martii Anno  
 quarto supradicto p̄ eand' Cur' cons' fuit  
 quod p̄d̄ S. recuperaret vers' p̄fat' J. D.  
 p̄d̄ sumam mille librarum de debito necnon  
 30 s. que sustinisset tam occasione detention'  
 debi ill' quam p̄ mis' & custag' suis p̄ ip̄  
 sum circa sectam suam in hac parte appōit'.  
 Et quod p̄d̄ J. D. esset in mia, &c. put  
 p̄ Record' & p̄cess' in Cur' Dom̄ Willi  
 elmi & Dñe Marie Regis & Regine nunc  
 Angl' corā Ballivis Burgi ill' apud G.  
 p̄d̄ jam residend' plenius liquet Quodq̄ ad  
 eandem Cur' die & anno ult' supradict' tent'  
 ad prosecutionē ipsius S. e Cur' ill' emana  
 vit sup̄ judic' illud quoddam p̄ceptum in  
 scriptis sub sigillo ejusdem Cur' cuidam J.  
 H. Ministro Cur' ill' direct' p̄ quod ei p̄  
 cept' fuit quod caperet eund' J. D. si invent'  
 foret infra Jur' ejusdem Cur' & eum salvo  
 custod' ita quod haberet corpus ejus adtunc  
 p̄ Cur' de Record' apud G. p̄d̄ 15 die  
 Martii eodem An̄ tenend' ad satisfaciend'  
 p̄fat' S. de Debo & Dampnis p̄dict' Virs.

tute cuius quidem pcepti pdict J. D. postea  
 & ante tunc pr' Cur scilicet 12 die Martii  
 Anno supradicto ipsum J. D. apud G. pdict  
 ac infra Jur Cur pdict in Executione p des-  
 ho & dampnis ill cepit & detinuit quousqz  
 idem J. D. postea scilicet eisdem die & Anno  
 apud G. pdict solvit eidem S. debum & dampnū  
 pdict Et hoc idem J. D. parat' est verifica-  
 re Unde per' iudic' si pdict S. de deho suo  
 pdict' ac ut pfert' solut' existend' Actionem  
 suam pdict' contra solutionem ill' habere des-  
 beat, &c.

Repl', Nul-  
 tiel Record'.

Et pdict S. dic' quod ipse p aliqua palle-  
 gat' ab Action' sua pdict hend' precludi non  
 debet quia prestando quod nullum tale pcep-  
 tum qual' supius mencionat' est emanabit e  
 pdict Cur de Recordo tenet apud G. pdict  
 pdicto 8 die Martii Anno quarto supradicto  
 prestandoqz etiam quod pdict J. D. non sol-  
 vit eidem S. pdict 1000 l. de deho seu pō  
 30 s. de dampnis vel aliquem denar' inde put-  
 icem J. D. supius placitando allegavit Pro  
 placito idem S. dic' quod non habet ali-  
 quod tale Recordū recupacon' debi & dampno-  
 rum pdict in pōta' Cur Domini W. &  
 Domine M. Regis & Regine nunc Anglie  
 coram Ballivis Burgi pdict' apud G. pdict  
 residend' quale pdict' J. D. supius placitando  
 allegavit Et hoc parat' est verificare Unde  
 per' iudicium & debum suum pdict unacum  
 dampnis suis octone detencon' debi ill' sibi  
 adjudicari, &c. Vide Clift's Ent. 186, &c. Vide  
 postea, as to Bars by Recovery.

As to the Pleading of Recoveries in Bar of  
 Debt, we shall have further Occasion to shew  
 them



them in the *Bars* of Executors and Administrators, and also in *Bar* by Foreign Attachment, and to Actions of *Trespafs*, &c.

In Debt the Defendant pleads an Outlawry after Judgment, in Disability of the Plaintiff.

*Repl', Per Nul tiel Record', & failer de Record'.*

¶ Et pōict R. P. qui tam, &c. dic' quod ipse p aliqua palleget' a Respons' ad breve suum pōict repelli non debeat quia dic' quod non habet' aliquod tale Record' utlagarie pōict put pōict W. J. supius allegavit, Et hoc parat' est verificare: Unde pet judic' & de hum suum pōict unacum dampnis pōict occone detencion' debi illi sibi ad judicari, &c.

Et pōict W. ut prius dic' quod tale hec Record' utlagarie pōict put ipse supius allegavit Et hoc parat' est verificare put Cur Regine hic cons' Et sup hoc dies dat' est tam p'fat' R. P. quam p'fat' W. hic usq' a die S'ci Martini in quindecim dies Et dictum est eidem W. quod tunc habeat hic Record' pōict *Adjorn' del* periculo incumben', &c. Ante quem diem, &c. *Terns.*  
(& Term adjorn' al' Hertf. & tunc ulterius dies dat' usq' Pas' in 3 sept') Et dcm est eidem W. quod tunc habeat hic Record' pō periculo incumben', &c. ante quem diem, &c.  
(& adjorn' Arere al' Westm) Ad quem dis



## Bar al Debt sur Recovery.

em hic scilicet apud Westm p̄dict vend tam  
p̄dict R. P. p̄ Attorn suum p̄dict quam p̄-  
dict W. in propz' p̄sona sua Ac idem W.  
Recor̄d p̄dict modo hic ad hunc diem non ha-  
bet put sibi p̄ Cur' hic dictum fuit, &c. Ideo  
cons' est quod idem W. p̄fat R. P. ad h̄es-  
se & Parr sua p̄dict respond, &c. Et super  
hoc p̄dict W. defend vim & injur' quando,  
&c. Vide Co. Ent. 160.

See Outlawry pleaded in Abatement, post  
judicium in deho. Repl' p̄ Nul tiel Recor̄d  
Rejoind est tale Recor̄d Et def. ad diem de-  
fecit de Recor̄d Et judic' quod respond ouster.  
1 Brown. 7. & Thomp. Ent. 9. 2 Mod. Int. 4.  
Rob. Ent. 214.

Utl' sur Ex' post fa. plead en Barr dun' Action  
de Debt.

Repl' Nul' tiel Record. Rejo' quod habet?

R. Et p̄dict T. die quod ipse p̄ aliqua p̄es-  
allegat' ab Actione sua p̄dict habend' p̄cludi  
non debet, quia dic' quod non habet' aliquod  
tale Recor̄d utlagarie p̄dict vers' ipsum T.  
qua' p̄dict R. supius allegavit Et hoc parat'  
est verificare Unde pet' judicium & debum  
suum p̄dict unacum dampnis suis occ̄sione de-  
ten̄coi' debi illi sibi adjudicari, &c.

Et p̄dict R. ut prius dic' quod tale habet'  
Recor̄d utlagarie vers' ipsum T. in Cur' de  
W. p̄dict reman' put ipse supius placitand'  
allegavit prout patet Term' S̄c̄e Trin  
Anno

Anno Regni dicte Domine Regine nunc 30  
 Roſ 2919. Et per' quod Termin' & Rotul'  
 ill' videant' & inſpiciant' Et quia Juſtic' hic  
 ſe adreſare volunt de & ſup inſpectione & Exe-  
 cutione Record' p'd p'eund' a. ſupius allegat' dies  
 dat' eſt partibus p'ed' hic uſque in Cro' Pur'  
 h're Marie ad inſpiciend' & erāiand' Record'  
 p'dict' eo quod iidem Juſtic' hic inde nondum,  
 &c. See Thomp. Ent. 207.

Def. monſtrat Record' Utlagar' in Cur' in  
 retardacon' Reſponcon'.

ſ. Ad quem diem hic veni tam p'dict' quer'  
 quam, (&c.) per Attozū ſuum Et ſup hoc  
 idem def. monſtrat hic in Cur' Record' hu-  
 jus Cur' de Utlagaria p'dict' per quod plane  
 conſtat Cur' hic tale Record' heri de Utlag-  
 aria p'dict' qual' idem def. ſupius allegabit,  
 Ideo conſ' eſt quod p'dict' def. eat inde ſine die,  
 &c. See 2 Townſ. Judgments 73. *Vide poſtea*  
*int' Judicia.*

Judic' de Utlagaria placitat' in Bar'.

ſ. Ideo conſ' eſt quod p'dict' quer' nichil  
 capiat p' h're ſuum p'dict' ſed ſic in mīa p'  
 falſo clamore ſuo inde Et quod def. eat inde  
 ſine die, &c. *Vide poſtea* (Nul tiel Record'  
 Utlag') inter Judicia.

*Note, The Defendant in Communi Banco*  
*pleaded Utlary in Bar, and produced the*  
*Record Sub pede ſigilli, annexed to the Plea,*  
 2 Lut.

2 *Lut.* 1512. The Reporter observes *fo.* 1514. That there was no need to produce the Record of the Utlary *Sub pede sigilli*, because that a Plea was in *Bar*, and also because the Record of the Utlary is in the same Court; and that so it was resolved in the Case of *Draycote and Curson.* 1 *Lut.* 39, 40. But he further observes, That if the Plaintiff had replied and pleaded *Nul tiel Record*, the true Conclusion of such a Plea ought to have been, *Et hoc parat' est verificare qualitercunque, &c.* prout *Cur' consid' Et quia Justic' hic se advisare volunt super inspectionem Recordi per prad' Def. superius allegat' dies dat' est partibus prad' hic usque, &c.* as it is in *Dyer* 227, 228. In which upon the pleading of *Nul tiel Record* of an Utlawry, the Entry was, *Et dist' est prasat' Defend' quod habeat Record' hic tali die sub suo periculo*; and there it is said, that the Record being in the said Court, that Entry was not formal. But the Reporter observes, that there are some Precedents in the like Cases in which the Plaintiff replies, *Qd' est tale Record' Et hoc parat' est verificare per Record' ill'.* And then the Entry is, *Et pet' quod Record' ill' videat' & inspiciat', &c.* as it is in *Robinson's Entries* 104. *Hern.* 278. *Brownlow's Judic. Writs tit. Scire fac'*, the last Precedent under that Title, and *Brownlow Lat'* 433. But in none of the said Precedents is any Mention, That the Party that pleads the Record *habeat Record' ill' tali die sub suo periculo*,



Bar per prior Action depending.

*Repl' per Nul tiel Record.*

¶ Et p̄dict T. A. R. & G. dic' quod breve suum p̄dict ult' impetrat' rōne p̄allegat' cassari non debet, quia dic' quod non habet' aliquod tale Record p̄dict placiti sup' dict' p̄iori breve original' ut p̄ferit' p̄sequi sup' posit' in Cur' dicti Dom' Regis hic remanend' indeterminat' qual' p̄dict M. p̄ placitum suum p̄dict supponit. Et hoc parat' sunt verificare. Unde pet' judicium & debum suum p̄dict unacum dampnis suis sibi adjudicari, &c.

Et p̄dict M. dic' quod habet' ac die impe- Rejoinder  
tracon' p̄ed' secundi brevis Originalis p̄dict' and Issue.  
T. A. & G. scil' 28 die J. Anno regni dicti Dom' regis nunc, &c. supradicto habatur tale Record' p̄ed' placiti sup' p̄ed' p̄iori brevi Original' ut p̄ferit' in Cur' dicti Dom' Regis hic remanend' qual' idem M. p̄ placitum suum p̄d' sup'ius allegavit. Et hoc parat' est verificare p̄ Record' illud & pet' qd' Record' illud p̄ Justic' hic videat' & inspiciat' Et quia Record' p̄d' modo hic in Cur' non habet' dēm est p̄fat' M. qd' Record' p̄dict p̄ ipm' scrutat' & illud parat' hēat hic in Crō Sēe Trin' sub suo periculo, &c. Idem dies dat' est tam p̄fat' T. A. R. & G. quam p̄fat' M. hic, &c. Vide Brown's Method' Novissima. 253.

Sur Action' depending in London, placitat' Aliter,  
puis imparlance ad interloquend' & tunc ad replicand', &c.———Ad quem diem coram  
Dñs

## Bar al Debt sur Recovery.

Dia Rūa apud W. vend tam pōict J. qnd  
pōict W. p Attorn suos pōict Et pōict J.  
dic quod p aliqua palleget' billa sua pōict  
cassari mie debet Quia dic quod non habet'  
aliquod tale Record in partes pōict qual' per  
pōict W. supponit Et hoc, &c. Unde,  
&c.

Et pōict W. dic quod habet' tale Record  
coram Majoze & Alderman pōict Civic' L.  
pōict qual' p pōict W. supponit' Et hoc, &c.  
Ideo, &c. See Rob. Ent. 223.

*In Debt*, Placitum quod auter bill' exhibit' fuit  
pro eisdem Offens' in Cur' Scaccarii.

Repl' Per Nul tiel Record' & Rejunc' quod  
habet'.

N. Et pōict R. K. qui tam, &c. dic quod  
p aliqua p pōict' W. B. supius plitand al-  
legat' billa ipsius R. pōict cassari mie debet  
quia dic quod non habet' aliquod Record bil-  
le pōict in pōict Cur' dicti Domi Regis de  
Scaccario qual' pōict W. B. supius inde pla-  
citando allegabit. Et hoc parat' est verificare  
Unde pet' iudicium Et quod billa ipsius R.  
qui tam, &c. bona adjudicet' Et pōict W. B.  
dic quod habet' tale Recordum bille pōict in  
pōict Cur' dicti Domi Regis de Scaccario  
qual' pōict W. B. supius inde allegabit put  
p Record inde in pōict Cur' dicti Domini  
Regis de Scaccario de pōict Termino Scti  
Hil' Anno 15 & 16 supradict' de Record re-  
cord



Idem constat manifeste Et hoc parat' est verificare p' Recordum inde p'ut Cur' Dñi Regis hic cons', &c. Et sup' hoc dictum est eidem W. B. quod habeat Recordum inde coram Dño Rege apud Westm' (tali die) sub periculo suo, Idem dies dat' est p'fat' R. ibidem, &c. See Thomp. Ent. 149.

Nul tiel Record' Comparencie placitat'.

¶ Et modo ad hunc diem, &c. Et idem C. defend' vim & injur' quando, &c. Et per' auditum Scripti Obl' p'dict' Et ei legitur, &c. per' etiam auditum Condiçion' ejusdem Scripti Et ei legitur in hec verba scilicet (The Condition, &c.) Quibus lectis & auditis Idem C. dic' quod p'dict' A. Action' suam p'dict' inde vers' eum habere seu manutenere non debet quia dic' quod post confecçion' Scripti Obl' p'dict' & ante diem exhibiçion' hille p' ip'ius A. scilicet die—Comparenc' prior' sequen' post dat' Script' Obl' p'dict' p'dictus C. comperuit coram dicto Rege nunc ad respondend' p'fat' A. in placito debi p'dict' secundum formam & effectum Condiçion' Scripti Obl' p'dict' Et hoc parat' est verificare per Record' Ballii inde in Cur' dicti Dom' Regis nunc coram ipso Rege apud Westm' p' remanend' Unde per' judic' si p'dict' A. Action' suam p'dict' vers' eum habere debeat, &c.

(Precludi non) Quia dic' quod non habet tale Recordum comparenc' p'dict' C. fact' coram dicto Domino Rege apud Westm' p'dict' die—in eadem Cur' dicti Domini Regis coram

Repl',



coram ipso Domino Rege apud Westm p̄s remanend qual ipse p̄dict C. supius allegabit Et hoc parat' est verificare Unde per' iudic & debum suum p̄dict unacum damnis suis occone detencon debi illi sibi adjudicari, &c.

Rejoin'.

Et p̄dict C. die quod habet' tale Recor̄d comparenc' ipsius C. fact' coram ipso Dom̄o Rege apud W. p̄dict die——— in p̄dict Cur' dicti Dom̄i Regis coram ipso Rege apud Westm p̄dict remanend qual ipse supius allegabit. Et hoc parat' est verificare per Recor̄d ill', &c. Ideo p̄cept' est eidem C. quod habeat hic (cāli die) Recor̄d ill' sub suo periculo, &c.

Aliter comperuit in Transgr'.

ff. Actionem non quia die quod ipse comperuit coram Domino Rege apud W. p̄dict die——— &c. ad respondend p̄fat J. W. in Condicon p̄dict supius nominat' de p̄dict placito transge secundum formam & effectum Condicon ill', cujus quidem def. comparencia in dicta Cur' dicti Dom̄i Regis coram ipso Rege apud Westm' p̄dict adunc & ibidem recor̄dabat' put p̄ Recor̄d inde in eadem Cur' ipsius Domini Regis apud W. p̄dict residen' liquet manifeste. Et hoc parat' est verificare p̄ Recor̄d ill' Unde per' iudic (si Actionem), &c.)

Repl'.

P̄cludi non quia die quod non hetur tale Recor̄d comparenc' p̄dicta' def. fact' coram dicto

dicto Domino Rege apud Westm' p'dict die——&c. in eadem Cur' dicti Dñi Regis coram ipso Dño Rege apud W. p'dict remanend' qual' ipse p'dict def. superius allegavit & hoc parat' est verificare Unde pet' judic' & debitum, &c. (ut antea.)

Et p'dict def. dic' quod hetur tale Record' Rejoin'. comparenc' ipsi⁹ def. fact' coram ipso Dño Rege apud Westm' p'dict die, &c. in p'dict Cur' dicti Dom' Regis coram ipso Rege apud W. p'dict reman' quale ipse superius allegavit Et hoc parat' est verificare per Record' ill', &c. Ideo p'cept' est eidem def. quod habeat hic (tali die) Recordum ill' sub suo periculo, &c. Vide Hansard's Ent. 115.

Comperuit ad diem in Communi Banco.

ff. Quando, &c. Et pet' auditum scripti p'dict Et ei legitur, &c. pet' etiam auditum Condition' ejusdem scripti Et ei legitur in hec verba (The Condition, &c.) Quibus lectis & auditis idem C. dic' quod p'dict A. Action' non, &c. Quia dic' quod ipse p'dict C. comperuit coram p'fat' Justic' dicti Domini Regis hic scilicet apud Westm' in p'dict Octavi S'ci Hillarii ad respons' p'fat' A. B. de p'dicto placito secundum formam & effectum Condition' p'dict cusus quidem C. comparencia in Cur' Regis hic adunc recordabat' put per Record' in eadem Cur' hic residend' liquet manifeste. Et hoc, &c. Unde, &c.

Precludi non, Quia dic' quod non hetur Replic'. aliquod tale Record' comparenc' p'dict C. coram

ram p̄fat Justic̄ dicti Domini Regis hic  
scilicet apud Westm' in p̄dict Octab̄ S̄ci Hil-  
larii in Cur' Dñi Regis hic reman̄ qual'  
ipse superius allegavit Et hoc parat' est ve-  
rificare Unde per' Justic̄ & debum suum unas-  
cū dampnis suis oc̄cone deten̄cōd̄ debi ill'  
sibi adjudicari, &c.

Rejoin'.

Et p̄dict C. ut prius dic' quod hetur tale  
Recordum comparat' p̄dict C. coram p̄dict  
Justic̄ dicti Domini Regis remanēd̄ qual'  
ipse superius allegavit Et per' quod Record  
ill' per Justic̄ hic videat' & inspiciat' Et quia  
Record illud parat' hic in Cur' modo non  
habet vicum est p̄fat C. quod Record ill' per  
se scrutat' illud habeat hic a die Pasch̄ in  
tres septimanas, Idem dies dat' est paribus  
p̄d hic, &c. Vide 1 Instr. Cler.

To end this Particular of *Nul tiel Record*,  
which is pleaded as well to other Matters  
as *Tit. Debt*, you may take Notice of these  
that follow.

¶ *Nul tiel Record Finis cum proclamac̄,*  
*Finis p̄duci'*, Et judicium superinde p̄ teneū  
in *Formedon*. Co. Ent. 326.

¶ *Nul tiel Record Inquisitionis post mor-  
tem*. Hern. 97.

¶ *Nul tiel Record Actus Parliamenti,*  
nec *Charte fact'* cum consensu Parliamenti.  
*Replicat'* inde in *Estopple* per *Exemplificac̄*  
*rac'* p̄olat' in Cur', *Demurr'* inde. 8 Co. 7.

¶ *Nul*



¶ Pul tiel Record Indictamenti de muris  
pro coram Coronatore, certiorari inde agard &  
retorari quod non habetur tale Recordum. Rast.  
Ent. 50.

¶ Pul tiel Record Indictamenti & At-  
tincture coram Justic' Gaule delibacionis. Kell  
193.

¶ Pul tiel Record Confessionis Felonie  
coram Coronatore per unum qui cepit Sanctu-  
arium. Rast. Ent. 54.

¶ Pul tiel Record quod def. fuit jurat'  
coram Justic' ad pacem ad inquirendum de Fe-  
loniis. Rast. Ent. 123. Simile 124. Et Cer-  
tiorari inde agard, Retorari ejusdem. Et Cur'  
inde advisare vult.

¶ Pul tiel Record Convictionis de Recus-  
sancia. 2 Brownl. 15.

Retorn' Nal tiel Record' sur Mittimus hors de  
Chancery.

¶ Nos J. W. Major ac T. A. & J. S.  
Ballivi ville infrascripte Domino Regi certi-  
ficamus quod nullum tale Record' nec pro-  
cessus loquere, unde infra sit mencio, penes  
nos residet. Et quod nullum aliud breve  
preter istud breve nobis in hac parte aliquo-  
liter liberatum fuit, &c.

Retorn' que il mist le Record'.

¶ Nos, &c. (ut supra) Quod Record' &  
processus loquere, Unde infra sit mencio De-  
(Part IV.) U mins

mino Regi ad diem infracontent' mittimus;  
put interius nobis precipitur. Vide Rast.  
Ent. 547. b.

*Judgments upon Nul tiel Record'. Vide antea.*

Qd' habet  
Record.  
loquele.

ff. Ad quem diem hic veni tam p'dict Quer  
quam p'dict def. p Attoz'd suos p'dict Et sup  
hoc visis & p Justic exaiat Termin' & Record  
p'dict eidem Justic hic satis constat quod he  
tur tale Record Loquele inter p'dict quer &  
p'fat def. coram Justic hic residend qual  
p'dict Quer supius allegavit Ideo cons' est, &c.

Qd' habet  
Record.  
Recuperac.  
in debito.

ff. Ad quem diem hic veni tam p'dict quer  
qm p'dict def. p Attoz'd suos p'dict Et sup  
hoc idem def. monstrat hic in Cur Record  
hujus Cur Recuperacionis p'dict inter ipsum  
quer & p'fat def. p quod plene constat Cur  
hic tale Record heri Recuperacionis p'dict qual  
idem def. supius placitando allegavit Ideo  
cons' est quod idem def. eat inde sine die, &c.  
Simile sur Ucl' mutatis mutandis.

Quer'  
profert in  
Cur' breve  
de Mit-  
timus cum  
Recordo  
placitat' in  
inclus.

ff. Et super hoc iidem J. & C. proferunt  
hic in Cur' quoddam breve Domini Regis num  
clm cum quodam Recordo in eodem brevi in-  
clus' ff. B. mil' & sociis suis Justic ipsius  
Domini Regis de Communi Banco hic direct  
quod quidem breve iidem Justic hic in Cur  
aperuer' quozum tenor sequit' in hec verba Veni,  
&c. sup quo p'dict Quer' pet' judicium & de-  
tum suu p'dict' unacum dampnis suis occione  
detencon' debi ill' sibi adjudicari, &c. Ideo, &c.

Aliter de  
Mittimus  
cum tenore  
Loquele.

ff. Et super hoc p'dict A. liberavit Justic  
hic in Cur' hze Dne Regine clm eidem  
Justic



Iustic' hic direct' unacum tenore Recordi p'dict' eidem Iustic' hic sub pede sigilli dicte Dñe Regine per dictum h're missum in hec verba Elizabeth, &c. Et super hoc viso & inspecto & per Iustic' hic examinat' Recordo p'dict' eidem Iustic' in forma p'dict' miss', eidem Iustic' hic satis constat quod tale habetur Recordum Loquere p'dict' quale p'dict' T. superius allegavit——(Vel sic Super quod idem quer' pet' iudicium & debum suum p'dict' unacum dampnis suis occasione detencion' debet ill' sibi adjudicari, &c. Et super hoc viso, &c. ut supra) Ideo cons' est quod p'dict' quer' recuperet vers' p'fat' def. debum suum p'dict' &c.

¶ Et super hoc p'dict' J. p'fert hic in Cur' <sup>Aliter.</sup> h're Dñe Regine Iustic' hic direct' in hec verba, &c.

¶ Ad quem diem, &c. Et Dña Regina <sup>Aliter.</sup> mand' Iustic' suis de Banco hic h're suum etiam in hec verba Elizabeth, &c. Tenor Recordi & p'cess' Unde in h'ri p'dict' fit mencio sequitur in hec verba Plita, &c. Super quo p'dict' Quer' pet' iudicium & debum suum p'dict' unacum dampnis suis occasione, &c. adjudicari, &c. Ideo cons' est, &c.

¶ Ad quem diem hic venit tam p'dict' quer' <sup>Aliter.</sup> quam p'dict' def. per Attorn' suos p'dict' Et idem quer' habet & liberat Iustic' hic Recordum p'dict' sub pede sigilli Dñe Regine de Cancellaria sua hic missum virtute h'ris Dñe Regine de Wittimus Iustic' hic direct' que quidem W'rd & Recordo remand' hic int' Recordo sine die affilat' Et sequitur in hec verba, &c. Quib' quidem W'rebi & Recordo lectis & auditis satis constat Cur' hic Res



cord illud fore idem Record in Parr' p'dict  
superius spec' (vel sit—fore idem Record  
quale p'dict Quer' superius allegabit) Ideo  
cons' est, &c.

Def. profert  
in Cur Mit-  
timus cum  
Record'  
Comparenc'  
sue in B. R.

¶ Ad quem diem hic veni tam p'dict C.  
quam p'dict R. per Attorū suos p'dict C.  
hic Record p'dict sub pede sigilli p'dict Super  
hoc idem R. habet & libet Iustic' Dord  
Regis de Cancellaria sua hic mis' virtute  
h'is Dñi Regis de Mittimus Iustic' hic di-  
rect' que quidem Wrd & Recordū sequuntur  
in hec verba Jacobus. &c. Super quo viso in-  
specto & per Iustic' hic examinat' Record  
p'dict Iustic' hic satis constat quod tale ha-  
betur Recordum Comparencie p'dict R. coram  
dicto Dño Rege apud Westm' p'dict quale  
p'dict R. superius allegabit Ideo cons' est  
quod p'dict quer' nihil capiat per h're suum  
p'dict sed sit in m'ia p' falso clamore suo  
inde Et quod p'dicta' def. eat inde sine die,  
&c.

Aliter.]

Sur Issue sur nul tiel Record' pur Ap-  
pearance d'un in Bank le Roy die Jovis  
prox' post Octab' Pur' Def. protulit Record  
d'un Bayle in Banco Regis de cest tenor  
—¶ Wallia coram Dño Rege apud  
Westm' de Termino Scti Hillarii Anno reg-  
ni Dñi Jacobi nunc Regis Angl' 10. Warr'  
¶ R. B. nuper de . . . . in Com' p'dict  
. . . . & R. C. nuper de . . . . in Com' p'dict  
. . . . tr' in Wall' super Cep' corp' Johi  
Doe de L. & R. R. de eadem die Veneris  
pr' Octab' pur' ads' R. S. Clie'.—Et  
cest Bayle per opinion Cur' fuit adjudge bon  
Record' del appearance & al jour eo quod  
nesh

est auter forme in Bank le Roy, d'appea-  
rance, Et ceo est common Form, Et quod  
intratur Veneris ubi la jour de l'appearence  
fuit Jovis car est de mesme Terme & pur  
mesme Cause.

¶ Ad quem diem hic veni tam p̄dict A. Major &  
quam p̄dict B. per Attor̄n suos p̄dict Et B. Aldermanni  
Major Civit' p̄dict & Aldermanni ejusdem London' mi-  
Civit' per W. F. Recordatorem dicte Civit' ser' Record'  
miser' Justic' hic Recordum p̄dict Unde su- per Record-  
perius sic mencō int' partes p̄dict habi' & datorem.  
coram eis residē & p̄dicto brevi annex' in  
hec verba, &c.

¶ Ad quem diem hic veni tam p̄dict quer' Vic' Lond'  
quam p̄dict def. per Attor̄n suos p̄dict Et certificant  
Uic' videt A. B. & C. D. modo mand quod quod non ha-  
scrutat' Rotulis & aliis memorand Record' betur tale  
de tempore p̄fat nuper Uic' in custod' sua Record' co-  
p̄stend invener' quod non letur in custod ram eis.  
sua tale Record Loquele p̄dict quale p̄dict  
quer' allegavit Ideo, &c.

¶ Ad quem diem hic veni tam p̄dict quer' Judic' pro  
quam p̄dict def. per Attor̄n suos p̄dict super quer' ubi non  
quo Termino & Rotulo p̄dict per Justic' hic habetur tale  
p̄dict & inspectis satis constat Justic' hic Record.  
quod non habetur aliquod tale Recordū qual'  
p̄dict def. superius allegavit (Ideo quer' re-  
cuperet debum & dampna, &c.)

¶ Ad quem diem hic veni tam p̄dict Judic' ubi  
quer' quam p̄dict def. per Attor̄n suos p̄dict Def. defecit  
Et idem quer' Record Loquele p̄dict per de Recordo  
plum superius allegat' hic ad hunc diem non Loquele.  
habet Sed inde defecit Ideo cons' est quod  
p̄dict quer' nihil capiat per breve suum p̄d



sed sit in Via pro falso clamore suo inde:  
Et quod predictus def. eat inde sine die, &c.

Quod non  
habetur Re-  
cord' Util'.

¶ Ad quem diem hic venit, &c. quam po-  
dictus, &c. in ppi' psonis suis Sup quo Ter-  
mino & rotulo poict p Justic' hic visis &  
inspectis satis constat eisdem Justic' hic qd  
non fuerit aliquod tale Recordum Atlagarie  
qual poict Def. supius plicando allegabit  
Ideo cons' est quod poict quer' recuperet debum  
& dampna, &c.

Aliter.

¶ Ad quem diem hic venit tam poict quer'  
in ppi' psona sua quam poict Def. p At-  
torum suum poict sup quo Terminis & rotu-  
lo poict p Justic' hic visis & inspectis satis  
constat eisdem Justic' hic quod non habetur  
aliquod tale Recordum Atlagarie poict quale  
poict Def. supius plicando allegabit Ideo  
cons' est quod poict quer' recuperet debum &  
dampna, &c.

See for all these Judgments in 2d Towns-  
end's Judgments, fo. 72, 73, 158, 159,  
&c.

¶ Tempore venditionis Status p Vic non  
fuit Record' Util'. Idem 161.

¶ Quod Def. respondit ouster sur defecit  
de Record' Util'. in retardac' respons'. Idem  
159. & Vide antea.

Quer' defe-  
cit de Re-  
cord' Com-  
parencie.

¶ Ad quem diem hic venit poict quer' p  
Attorem suum poict Et poict A. poict Re-  
cordum Comparencie poict p ipsum supius  
allegat' hic ad hunc diem non habet sed in-  
de defecit Ideo cons' est quod poict quer' re-  
cuperet. Id. 158.

¶ Ad



¶ Ad quem diem hic veid tam p̄dict' quer' Aliter.

quam p̄dict' Def. p̄ Accoꝝ suos p̄dict' Et  
sup hoc Termino & Rotulo p̄dict' p̄ Justic  
hic visis & inspectis satis constat eisdem Jus  
tic' hic quod non hetur tale Recoꝝ Com  
parencie qual' p̄dict' Def. supius allegabit  
Ideo cons' est quod p̄dict' Quer' recuperet,  
etc. Id. ibid.

¶ Recoꝝ Finis spec' in Parr' est plat'  
n Cur' & Cur' advisare vult inde. Idem  
159.

¶ Ad quem diem hic veid tam p̄dict' Quer' Quod habe-  
quam p̄dict' Def. p̄ Accoꝝ suos p̄dict' Et sup tur Breve  
hoc viso & inspect' p̄ Justic' hic h̄i p̄dict', Original.  
eisdem Justic' hic satis constat quod hetur  
tale Recoꝝ ejusdem h̄is Originalis in Cur'  
hic affilar' qual' p̄dict' R. supius allegabit  
Ideo cons' est, etc. Idem 73.

¶ In Replevin, Certificatio rotulamenti  
indentur in Comd p̄ Custodem Rotul' unde  
pul tiel Recoꝝ pleas. Et Judicium supers  
nde p̄ Advocante. Idem 161.

¶ Dies ulterius dat' Def. ad habend' Re  
coꝝ ex assensu Quer'. Ibid.

¶ Pul tiel Recoꝝ Recoꝝ p̄litat. Vide  
postea Bar sur Recognizance.

*Bar sur Recognizance.*

The Attorney General declares upon a Recognizance taken in *Chancery* to appear before the King and Counsel, and in the mean time to keep the Peace.

Defendant pleads, That T. assaulted him first, and thereupon he defended himself against him, &c.

Bar.

**E**T p̄dict R. p̄. per T. R. Attorn suum ven̄ & defend̄ vim & insur quando, &c. Et dic̄ quod Dñs Rex nunc ipsum R. oc̄cone Premiss' occasionare non debet nec potest quia dic̄ quod p̄dict' T. die & Anno supradict' apud B. p̄dict vi & armis in ipsum R. p̄. insult' fecit & ipsum verberasse & male tractasse voluit p̄ quod idem R. tunc ibm se defendebat Et sic dic̄ quod malum si quod p̄fati T. adtunc ibm evenit hoc fuit de insultu p̄dict T. p̄p̄ & in defensione ipsius R. Et hoc parat' est verificare Unde pet' iudicium si p̄dict Dñs Rex ipsum R. ea oc̄cone occasionare debeat seu possit, &c.

Replie.

Et p̄dict J. qui, &c. dic̄ quod p̄dict Dñs Rex nunc p̄ aliqua, &c. Pcludi non quia idem J. dic̄

**I.** dic' quod p'dict' R. die & anno supradictis  
 vi & armis, &c. de injur' sua p'p' & absque  
 causa per ipsum R. sup'ius allegat' in p'dict'  
 T. agud H. p'dict' insult' fecit & ipsum Gbe-  
 ravit vulneravit & maletractavit put' idem J.  
 qui, &c. sup'ius p' dicto Dño Rege supponit  
 Et hoc p' eodem Dño Rege per' quod in-  
 quiratur p' Patriam Et p'dict' R. similiter J.  
 deo, &c. Vide Rast. Ent. 193.

Defendant pleads a Deseazance in Bar of a  
 Recognizance.

**A.** Cco non Quia dic' quod p' quandam  
 Indentur' fact' apud W. p'dict' p'dicta  
 tali die & anno supradict' int' ipsum J. & quens-  
 dam J. B. p' noia, &c. ex una parte & p-  
 fat' J. S. p' noen, &c. ex altera parte cu-  
 jus alteram partem sigillo ipsius J. S. sigil-  
 lat' idem C. hic in Cur' p'fert cujus dat'  
 est eisdem die & anno testat' sit quod ubi  
 idem C. & p'dict' J. B. p' quoddam script'  
 suum Recogn' capt' & recogn' coram dicta  
 Dña Regina in Cancellar' sua gereñd' dat'  
 eisdem die & anno tent' & conjunctim & di-  
 visim obligat' fuer' p'fat' J. S. in summa  
 40 l. legalis monete Angl' solubil' put' per  
 p'dict' script' sive Recogn' plenius liquere  
 potuisset Probitum tamen fuit Et p'dict' J.  
 S. p' se Hered' & Assign' suis p' eandem In-  
 dentur' dic' quod si iidem C. & J. B. Hered'  
 Exec' Adm' vel Assign' fut' aut eor' ali-  
 quis bene & fidelit' solverent aut solvi causas  
 rent



rent p̄fat J. S. Grece vel Assignd suis sum-  
mam 20 l. legalis monete Angl' tali die post  
dat' ejusdem Indentur' quod tunc p̄dict script'  
sive Recognid' penitus vacua & nullius effecti  
foret alioquin stare & remaneret in pleno vi-  
gore & effectu put p̄ eandem Indentur' ples-  
nius apparet Et idem C. dic' quod p̄dict Re-  
cogid' in Part' p̄dict supius nominat' & Re-  
cogid' in Indentur' p̄dict supius spec' sunt  
un' & eadem Recognitio & non al' neque di-  
versa Et idem C. ulterius dic' quod ipse sol-  
vit p̄fat J. (p̄dicto tali die & anno supradict')  
p̄dict 20 l. quas eidem J. eodem die solbisse  
debuit secundū formam & effectum Indentur'  
ill' viz. apud W. Et hoc, &c. Unde, &c.

Repl' non  
solvit.

Precludi non, Quia dic' quod p̄dict C. non  
solvit p̄fat J. S. p̄dict tali die, &c.  
p̄dict 20 l. quas ei eodem die solbisse debuit  
secundum formam & effectum Indentur' p̄dict  
put p̄dict C. supius allegavit Et hoc pet'  
quod inquiretur p̄ Patriam, &c. Vide i Bro.  
Ent. 174.

Vide postea Bar per Defeazance.

Bar' al Recogn' per Reddidit se.

ff. **A** Cion non, Quia dic' quod post su-  
per die p̄dict sup Bill' p̄dict de trans-  
vers' p̄fat W. C. in forma p̄dict reddit' &  
ante diem impetrat' Brevis Original' p̄dict  
H. scilicet (tali die & anno) p̄dict W. se por-  
tione Marese Dñi Regis coram ipso Rege  
apud Westm in Com' p̄dict tunc existē  
occone

oſſione pmiſſ' reddidit juxta form' & effectum  
Condiſion' Recogni' p'dict' Et hoc, &c. Vide  
1 Bro. Ent. 178.

Nul tiel Record' Recogn'.

**N.** **A** Cō non, Quia dic' quod non hetur  
aliquod tale Recoꝝ Recogni' p'dict'  
in p'dict' Cur' dicti Dñi Regis nunc hic re-  
siden' qual' p'dict' H. p' Parr' suam p'dict'  
ſupius ſuppon' Et hoc parat', &c.

Precludi non, Quia dic' quod tale hetur  
Recoꝝ Recogni' p'dict' in p'dict' Cur' dicti  
Dñi Regis hic residen' qual' ipſe p' Parr'  
ſuam p'dict' ſupius ſuppon' put' patet Ter-  
mino Scti M. Anno regni dicti Dñi Regis  
nunc quinto Rotulo 12. Et pet' quod Ter-  
minus & Rotul' ill' p' Cur' hic videantur &  
inſpiciantur, &c. Et quia Juſtic' hic ſe ad-  
viſare volunt de & ſup' inſpectiō' & examina-  
tiō' Recoꝝ p'dict' p' p'dict' H. ſupius allegat'  
dies dat' eſt partibus p'dict' hic uſq' a die  
paſc' in quinque ſeptimanas Co quod ſident  
Juſtic' hic inde nondum, &c.

*Aliter, Upon a Scire facias againſt the Bail.  
Bar, per Nul tiel Record' Recogn'.*

**N.** **E** T p'dict' T. & B. ſic p'monit' p' W.  
J. Atcoꝝ ſuū ſilit' ven' ſup' quo p'  
dict' Quer' petit' executionem de debito & dampn'  
p'dict' verſ' p'dict' T. & B. ſecundum formam  
& eſt.



## Bar al Debt sur Recognizance

& effectum Recogni pōit' sibi adjudicari, &c.  
 Et pōit' T. & B. per auditum pōit' Brevium  
 de Sci' fac Et eis leguntur, &c. Quibus lec-  
 tis & auditis idem T. & B. dic' quod pōit'  
 R. executōm suam vers' ipsos de debo &  
 dampnis pōit' here non debet quia dic' quod  
 non habetur aliquod tale Recordum Recogni-  
 tōm pōit' in pōit' brevi de Scire fac supius  
 menconat' quale p breve pōit' supius sup-  
 ponitur Et hoc parat' sunt verificare Unde  
 per' judic' & quod pōit' Quer' ab executōm  
 sua de debo & dampn' pōit' vers' ipsos T.  
 & B. hend' pcludatur, &c.

Repl' quod  
 habetur tale  
 Record' Re-  
 cogn'.

Et pōit' Quer' dic' quod ipse per aliqua  
 p pōit' T. & B. supius plicando allegat' ab  
 Executōne vers' ipsos T. & B. de debo &  
 dampn' pōit' hend' pcludi seu retardari non  
 debet quia dic' quod in pōit' Cur Dñi Re-  
 gis hic coram ipso Rege habetur tale Record  
 pōit' in pōit' brevi de Scire fac mencon-  
 nat' qual' p idem breve supius supponitur  
 put p Record inde int' Record ejusdem Cur  
 de Termin' S'i Michis Anno regni dicti  
 Dñi Regis nunc 8 Rotulo 313. in Cur dic-  
 ti Dñi Regis hic coram ipso Rege residend  
 plenius liquet & apparet & hoc idem Quer'  
 parat' est verificare p Record ill' & per'  
 quod Termin' & Rotul' pōit' p Cur Dñi  
 Regis hic videantur & inspiciantur, &c. Et  
 quia Cur dic' Dñi Regis hic de judic' suo de &  
 sup' Premissis reddend' nondum advisatur dies  
 inde dat' est partibus pōit' coram Dño Re-  
 ge apud Westm' usque diem Mercurii pr'  
 post Quindem Pasche de judic' suo de & sup'  
 premissis



pmittis audiendū Co quod Cur' dicti Dñi Regis inde nondum, &c. Vide Theſ. Brev. 265, &c.

See Hern 278. Nul tiel Record' Recognitionis plead per 2 Manu capt' separatim.

The Bail sur Recogn' plead Nul tiel Record', recuperation', &c.

**E**T p̄dict' Def' dic' quod p̄dict' Cress' cuſom' vers' eos de ſeparalibus ſummis p̄dict' ſeparatim p̄ ipſos in forma p̄dict' recogni' here non debet quia dic' quod non h̄etur aliquod tale Recoꝝd' recuperacoꝝd' debiti & dampnoꝝ p̄dict' vers' p̄dict' T. in forma p̄dict' hic' hic in Cur' reſiden' qual' idem Quer' p̄ Webe & Parr' ſua p̄dict' ſupius ſupponi & hoc parat' ſunt verificare Unde pet' iudic' ſi p̄dict' Quer' execucoꝝd' vers' eos de ſeparalibus ſummis p̄dict' ſeparatim p̄ ipſos in forma p̄dict' recogni' here debeat, &c.

Et p̄dict' Quer' dic' quod ipſe p̄ aliqua Pal-  
legat' ab execucone ſua p̄dict' vers' p̄dict' Def.  
de ſeparalibus ſummis p̄dict' ſeparatim p̄ ipſos in forma p̄dict' recogni' retardari non debet Quia dic' quod tale habetur Recoꝝdum recuperacoꝝnis debiti & dampnoꝝ p̄dict' vers' p̄fat' T. in Cur' hic reſiden' qual' idem quer' ſuperius allegabit put patet Termino S̄ci Will' Anno 3. ſupradicto Rotulo 728. Et pet' quod Terminus & Rotul' p̄dict' videantur & inſpiciantur Et quia Juſtic' hic ſe adviſare volunt

volunt de & sup inspection & examination  
Record p̄dict p eund J. superius allegat' pri-  
usquam Judic' inde reddant dies dat' est partis  
bus p̄dict hic usque in Octab S'ti Michis ad  
inspiciend & examinand Record p̄dict Co quod  
idem Justic' hic inde nondum, &c.

Vide Bro. Vad. 456.

Bail plead in Abatement, another *Scire facias*  
depending upon the Recognizance. Repl',  
*Per Nul tiel Record'*.

**E**T p̄dict R. H. dic' quod ipse p aliqua  
p p̄dict J. R. R. H. & J. J. superius  
allegat' ab executione sua p̄dict p̄cludi non  
debet quia dic' quod non habetur aliquod ca-  
se Recordum de aliquo al' hzebi de Sed fa  
p̄secut' p p̄dict R. H. vers' p̄dict J. R. R. H.  
& J. J. als scit de Termino S'ti Michis  
Anno regni dicti Dñi Regis nunc 32. & an-  
te emanatōem p̄s hris de Sed fa modo p  
ipsum R. p̄lat' p̄ut p̄s J. R. R. H. &  
J. J. superius in hzebia sua p̄dict p̄litaver'  
Et hoc parat' est verificare Unde per' Judic'  
& Executionem suam de dampn p̄dict virtute  
recogn p̄s vers' p̄fat J. R. R. H. & J. J.  
sibi adjudicari, &c. Sed quia Cur' Dñi Re-  
gis nunc hic de iudicio suo de & sup p̄re-  
miss' reddend nondum advisatur dies inde dat'  
est partibus p̄s coram Dño Rege apud Westm  
usque diem Mercurii pr' post tres Sept' S'te  
Trin de iudicio suo inde audiend Co quod  
Cur' dicti Dñi Regis hic inde nondum, &c.  
Ad



Ad quem diem coram Dño Rege apud Westm̄ vend partes dict' p Att' suos p̄s su-  
p quo vis' & p Cur' p̄dicti Dñi Regis nunc  
hic inspectis omnibus & singulis p̄miss' maturas  
& deliberatione inde habita p eo quod videtur  
Cur' Dñi Regis nunc hic quod non habetur  
aliquod tale Record de Scd fā coram Dño  
Rege hic resident qual' p̄s J. R. R. H. &  
J. J. supius p̄tando allegaver' Cons' est quod  
p̄s R. H. habeat executionē suam vers' p̄fat'  
J. R. R. H. & J. J. secundum formam & ef-  
fectum Recognit' p̄s, &c.

Non habetur  
tale Record  
& Judic' pro  
quer'.

Vide Thes. Brev. 281.

Manucaptor' placitant quod null' Ca' fa' fuit  
pros' vers' Def.

**E**t p̄s W. S. & J. L. p J. Attorid  
suum vend & dic' quod p̄s R. C. & J.  
executionē suam de debito & dampn' p̄s vers'  
iplos W. & J. p̄textu Recognit' p̄s habere  
non debent Quia dic' quod post redditiōē  
Judicii p̄s vers' p̄s H. C. in forma p̄s ha-  
bit' & ante emanatiōē p̄s primi h̄is de Scd  
fā vers' iplos W. & J. nullum h̄re de Cap'  
ad Satisfaciend' de & sup Judic' ill' per p̄s  
R. & J. vers' p̄s H. debito modo p̄secut' &  
recognat' fuit in Cur' dicti Dñi Regis coram  
ipso Rege nunc h̄it' quod secundum cons' Cur'  
ill' a tempore cuius contr' memoria hominū  
non existit usitat' & approbat' in eadem fieri  
debuisset antequam aliquod breve de Scd fā  
vers' iplos J. & W. emanasse debuit Et hoc  
parat'



## Bar al Debt sur Recognizance.

parat' sunt verificare Unde pet' iudic' si pō  
R. & J. execution' suam de deho & dampn'  
pō vers' ipsos W. & J. pteptu Recogn' pō  
habere debeant, &c.

Vide Thomp. Ent. 281.

Aliter.

**E**T pō A. J. R. M. H. H. & H. D.  
per S. S. Att' suum veni & dic' quod  
pō W. R. execution' suam de deho & dampn'  
nis pōict' virtute Recogn' pō vers' eos here  
non debet Quia dic' quod post diem reddi-  
tion' Iudicii pō vers' pō T. L. ad sect' pō  
W. R. & ante emanation' pō hris Dñi Re-  
gis de Scire fac' vers' ipsos A. R. H. & H.  
ut Manu captos pō T. L. ad sectam pō W.  
R. nullum hie de Cap' ad Satisfac' debite  
psecut' retor' & affilat' fuisset de Reco' ad  
sect' pō M. R. vers' p'fat' T. L. de debito  
& dampnis pō secundum debic' Legis p'cess'  
& consuetud' hujus Cur' Et hoc, &c. Unde  
pet' iudic' si pō W. R. execution' vers' eos de  
debito & dampnis pō virtute Recogn' pō he-  
re debeat, &c.

Vide Thomp. 282.

Scire facias super Recogn' capt' pro Rege  
coram Justic' Pacis & forisfact' & Def. pla-  
cit' Nul tiel Record'.

**A**D quem diem hic veni tam p'ed J.  
quam pō J. sic p'monit' per Attorid  
suos

suos, Et eadem *J.* ut prius per executionem  
vers' *J.* de debito & dampnis *pō* sibi ad-  
judicari, &c. Super quo *pō J.* dic' quod *pō J.*  
executionem suam vers' eum de debito & damp-  
nis *pō* dict' here non debet quia dic' quod non  
habetur aliquod tale Record recuperacionis debiti &  
dampnorum *pō* dict' qual' p' breve *pō* dict' superius  
us supponitur Et hoc parat' est verificare Unde  
per' iudic' si *pō* dict' *J.* Executionem suam vers'  
eum de debito & dampnis *pō* dict' here debeat,  
&c.

Et *pō* dict' *J.* dic' quod ipse p' aliqua p' *pō*  
*J.* supius p'titendo allegat' ab executione sua  
vers' eum de debito & dampnis *pō* dict' habendū  
p'cludi non debet Quia dic' quod habetur  
tale Record recuperacionis debiti & dampni  
*pō* dict' qual' p' breve *pō* dict' supius supponitur  
put patet Termino S'ci Mich'is Anno regni  
Dñi Regis nunc, &c. 26. Rotulo 417. Et  
hoc parat' est verificare p' Record ill' Et per'  
quod Terminus & Rotul' ill' p' Cur' hic vi-  
deantur & inspiciantur, &c. Et quia Cur' hic  
de Iudicio suo de & sup' Premissis nondum  
advisatur Dies inde dat' est partibus *pō* dict'  
coram Iustic' de Banco hic usq; a die Pas-  
che in quinq; Septimanas de Iudicio suo de  
Exit' ill' audiens Co quod Cur' hic inde  
nondum, &c.

Vide Officin' Brevium 315.

Intratio Scire facias versus Manuceptores super Querelam remot' e Cur' Burgi de Southwark & 2 nichils return' Et Nul tiel Record' placit' Et Repl' inde per Breve de Errore in Banco Regis & dies dat' ad producend' Record'.

**N.** **E** **T** p<sup>o</sup>dict **W.** **L.** & **M.** p **W.** **R.** Att' suum veni & defendi vim & injur' quando, &c. Et dic' quod p<sup>o</sup>dict **H.** executionem vers' eos de dampnis p<sup>o</sup>dict' habere non debet quia dic' quod non habetur aliquod tale Recordum recuperacionis dampnorum p<sup>o</sup>dict' int' ipsos **W.** & **L.** & p<sup>o</sup>fat' **H.** in p<sup>o</sup>dict Cur' dicti D<sup>ni</sup> Regis hic remanens qual' p<sup>o</sup>dict **H.** p breve suum p<sup>o</sup>dict' supius supponit Et hoc parat' sunt verificare, Unde per' Judic' si p<sup>o</sup>dict **H.** Executionem de dampnis p<sup>o</sup>dict' habere debeat, &c.

Repl'.

Et p<sup>o</sup>dict **H.** dic' quod ipse p aliqua p<sup>o</sup>allegat' ab Executione p<sup>o</sup>dict' h<sup>o</sup>nd p<sup>o</sup>cludi non debet, Quia dic' quod die impetrat' p<sup>o</sup>dict' p<sup>o</sup>mi brevis de Scd fa scilicet (tali die & anno) supradicto & continue postea usq' 28 diem Maii isto eod' Termino tale habetur Record' recuperacionis dampnorum p<sup>o</sup>dict' int' ipsum **H.** & p<sup>o</sup>fat' **H.** in eadem Cur' D<sup>ni</sup> Regis put p p<sup>o</sup>dict Breve de Scire fa supius allegabit Quodq' postea scilicet eodem 28 die Maii isto eodem Termino Record' p<sup>o</sup>dict' cum omnibus ea tangend' virtute cusuldam h<sup>o</sup>is D<sup>ni</sup> Regis de Errore corrigend' **L.** **R.** **W.** Capital' Jur' sic'



fic' Dñi Regis de Banco hic direct' coram  
 Justic' ipsius Dñi Regis ad pñta co-  
 ram ipso Rege tenend' assign' recognabil'  
 transmiss' & remot' fiter in pñct' Cur' dicti  
 Dñi Regis coram ipso Rege apud Westm'  
 pñct' tunc existend' Quod quidem Record' in for-  
 ma pñct' transmiss' in pñcta Cur' dicti Dñi  
 Regis coram ipso Rege apud Westm' pñct'  
 adhuc remanet de Recordo in suis pleno ro-  
 pore & effectu minime reuersat' & adnihilat'  
 Et hoc parat' est verificare p Record' illud  
 Ideo idem H. habeat hic in Octab' S'ri Mi-  
 his Record' pñct' suo periculo, &c. Idem  
 ies dat' est partibus pñct', &c.

Vide Officin. Brev. 281.

## Bar al Bill en Debt.

The Plaintiff being the surviving Obligee declares upon a Penal Bill to be paid when the Defendant should be able. Defendant pleads in Bar, *Qd' non est habilis*.

ff. **A**ctionem non, Quia dic' quod p'dict' T. S. post confectionem Bille p'dict' & ante diem impetrat' Original' p'dict' non fuit habilis, Anglice was not able, de bonis & catallis suis p'p' ad solvend' p'fat' W. C. p'd 11 l. 16 s. 8 d. put p'dict' W. 1 Parr' suam p'dict' sup'ius supponit. Et de hoc ponit se sup' p'iam, &c. Vide Asht. En 234. alias 202.

See Debt upon a Bill for Payment of Five Pounds to the Plaintiff, if he should go or run with such a Weight, and between such Day and Hours, from such a Place to such a Place Bar *Quod Quer' non ibat*, &c. 3 Brown 127.

See Debt upon two Bills for Payment of Foreign Money, or Value in *English* Money. Bar That the Defendant was at the Fairs in *Flanders*, ready to pay in *English* Money, as much as the Foreign Money did amount to, if the Plaintiff

Plaintiff, &c. had been there to receive and deliver the Bills, and traverses, that the Foreign Money did amount to the Money alledged in the Declaration. Issue taken upon the Traverse, & *Venire fac' de medietat' Linguae.* Rast. Ent. 158. b.

See before Number 34. *Bar al Debt sur Bill Oblig'* to pay 5 l. *per Ann.* for five Years towards the Education and Maintenance of the Defendant's Daughter.

Bar al Bill' per Literam Compositionis.

¶ Et p̄d T. C. p̄ J. J. Attornd suum eid' & Defend vim & injur' quando, &c. Et ic' quod p̄d P. Actionem suam p̄d inde vers' um habere non debet quia dic' quod post onfectionem ville p̄d scilicet 4 die Dec' Anno Regni Domini Regis nunc 7 p̄d P. G. M. R. &c. Creditores ipsius T. C. apud A. n Paroch' & Ward p̄d p quoddam scriptum num sigillis suis sigillat' hic in Cur' prolai' erensque Dat' eisdem die & Anno (recitando eodem scripto, Cum die dat' ejusdem scripti) p̄d T. C. indebitat' fuit p̄d Creditoribus suis in diversis separat' denar' summis ipsiqz fat' Creditores intelligend' quod p medios diversor' dampnor' que p̄d T. Huisset & haere verisilis fuit p rationem credenc' in habilibus Debitoribus & p diversos alios casuales medios, Et quod cone inde idem T. tunc non fuit habilis satisfacere ipsis p̄fat' Creditoribus suis ultra septem solidos de quibus



libet libra sive viginti solidi veri debiti adtunc debiti & debendi cuilibet eorundem Creditorum, De quibus quidem septem solidi per qualibet libra sive viginti solidi de vero debito ipse p[ro]p[ri]us T. C. tum obtulit sup[er] general[em] Agreement[um] satisfacere per venditionem tot[um] quod tunc habuit infra spat[um] unius mensis p[ro] sequend[um] diem quo ultimus ipsorum p[ro]p[ri]us Creditor[um] suorum sigillasset & subscripsisset & ut factum suum delibasset p[ro]p[ri]us script[um] Agreement[um] hic in Cur[ia] plac[et], super quo iidem Creditores ejusdem T. C. in Christiana sorte respicientes pauperem Statum suum & volentes componere cum eo perscientes quod intentio & p[ro]positum ipsius T. C. fuit solvere debita ejus juxta habilitatem suam Et non existend[um] desiderantes imprisonmenti sui per quod ipse non solum foret in periculo penitus depauperari, Anglice to be utterly undone, sed ipsi p[re]dicti Creditores sui totaliter amittere integra debita sua per idem scriptum suum hic in Cur[ia] plac[et] conveni[re] p[ro]miser[unt] & concesser[unt] Et quilibet eorum Creditorum per seipso separatim & per quolibet Executor[um] Administrator[um] & Assign[um] suorum conveni[re] p[ro]miser[unt] & concesser[unt] ad & ad p[re]dict[um] T. C. Exec[utorem] Administrat[orem] & Assign[um] suis acceptare & capere in plenam satisfactionem omnium debiti & demand[um] debiti ut p[re]fert[ur] cuilibet eor[um] per p[re]dict[um] T. C. (except[um] De his & denariis summis postea except[um]) 7 s. legalis monete Anglie de & per qualibet libra sive viginti solidi de vero debito debiti eis autalicui eorum solvend[um] ut p[re]dict[um] (except[um] tantummodo talibus de his & denariis summis que p[ro]p[ri]us T. C. simulcum T. W. de L. Grocer[um] Reter[um] & fuer[unt] obligat[um] conjunctim & divisim

divisim solvere eisdem Creditoribus vel eorū  
alicui) & non computand aliqua penalitat' sive  
forisfact' fore ut debum, Et quod super solu-  
tionē quorumlibet septem solid' p qualibet  
libr' sive 20 s. de vero debito ut pferat' (ex-  
cept' pzeexcept') ut legitimam oblationem ins-  
de infra tempus pantea spec' & recusaconē  
recipe p eosdem quilibet eorunde Creditorum  
separatim Exec' & Admin' sui deliberarent aut  
causarent deliberari pfat' L. C. Exec' vel As-  
sign' suis omnia talia scripta obligatoz' bil-  
las & Assurancias que quilibet aut aliquis  
eorum fuer' aut habuit p aliquibus debis  
supradict' (except' tantummodo omnibus talis-  
bus scriptis Obligatoriis billis & assuranciis in  
quibus pdict' L. C. simulcum pfat' L. III. ste-  
ter' & fuer' conjunctim & divisim obligat' ipsis  
pfat' Creditoribus vel alicui eorum ut pdict' est)  
& ulterius sigillare & subscribere & ut  
factum cuilibet eorum separatim deliberare pfat'  
L. C. Executor' Administrator' vel Assign' suis  
Relaxaconē & exoneraconē in Lege p  
& concernend omnia & singula pdict' deba tunc  
separatim debend omnib' & singulis eisdem  
Creditoribus & satisfact' eis in form a pre-  
dict' super satisfactōē inde (except' pdict' debis  
p quibus pdict' L. III. stetit obligat' cum pfat'  
L. C. ut pmittit') Et quilibet ipsorum pdict' Creditorum  
separatim convenit pmissit & concessit p seipso Exec' Admin'  
& assign' suis p scriptum pdict' quod si pdict'  
L. C. Exec' Admin' & Assign' sui bene & fidelit'  
solverent aut causarent solvi ipsis pfat' Creditoribus  
suis separatim infra spaciū unius mensis prox' & im-  
mediate



mediate sequend diem quo ultimus ipsoꝝ p̄s  
 Creditoꝝum sigillasset & subscripsisset ac ut  
 factum suum delibasset idem script' Agreas  
 menti ut p̄dict' est p̄dict' summam 7 s. sup  
 & p̄ qualibet libꝛa sive 20 s. veri debi tunc  
 separatim debeñ cuilibet eozum (except' p̄dict'  
 Dehis p̄ quibus T. W. stetit obligat' cum  
 p̄lat' T. C. ut p̄fert') Et non computan'  
 penalitates sive forisfactur' foꝛe aliquod de hūm  
 Quod tunc & extunc ab & post quamlibet  
 tal' soluconē 7 s. sup & p̄ qualibet libꝛa sive  
 20 s. veri debi tunc separatim debeñ ut p̄mits  
 tit' (Except' p̄cept') idem scriptum hic in  
 Cur' p̄lat' sub manibus & sigillis ipsoꝝum Crea  
 ditoꝝ foꝛet sufficiens relaxaço & exoneraco  
 imperpetuum & barra ad omnia tempora ab &  
 post talem soluconem fact' ut p̄fert' foꝛe plas  
 citat' in Lege per & p̄ p̄dict' T. C. Crec  
 & Admin' suis vers' aliquem & quemlibet  
 eozundem Creditoꝝum Crec Admin' vel Assign'  
 suoꝝ separatim cui soluço fact' foꝛet de p̄dict'  
 7 s. super qualibet libꝛa vel 20 s. de vero  
 debo ut p̄dict' est, Except' p̄dict' Dehis pro  
 quibus p̄dict' T. C. & T. W. steter' & fuer'  
 conjunctim & divisim obligat' ut p̄fert' put  
 per scriptum illud plenius apparet Et idem  
 T. C. ulterius dic' quod ipse post confectōē  
 bille p̄dict' & ante confectōē scripti hic in  
 Cur' p̄lat' scilicet primo die Novend Anno  
 Regni dicti Dñi Regis nunc Anglie 7 supꝛa  
 dict' solvit p̄fat' P. decem libꝛ' parcel' p̄dict'  
 27 l. 11 s. & 8 d. eidem P. virtute bille p̄dict'  
 debi' videlicet apud L. in Paroch' & Ward'  
 p̄dict' Quodqꝫ dicto tempore confectōē Script'  
 p̄dict' hic in Cur' prolac' non fuer' nisi 17 l.  
 11 s. 8 d. de vero debo p̄fat' P. virtute bille  
 p̄dict'



p̄dict debet Et idem T. C. ulterius dicit  
 quod P. S. existens unū Creditorum ipsius  
 T. C. p̄dict cuius nōen scrip̄t p̄dict hic in  
 Cur̄ plat' subscript' existit fuit ultimus eorū  
 Credit' ipsius T. C. p̄dict qui scriptū  
 illud hic in Cur̄ plat' sigillavit subscripsit & ut  
 factū suū delibavit Quodq; idem P. S. p̄dict  
 Scrip̄t' hic in Cur̄ plat' postea scilicet p̄m̄  
 die Aprilis Anno Regni dicti Dom̄ Regis  
 nunc Angl, &c. octavo & non antea apud L.  
 in Paroch & Ward p̄dict sigillavit subscrip-  
 sit & ut factum suū delibavit, ac etiam quod  
 7 s. p̄ qualibet libz' sive 20 s. de p̄dicto  
 debito 17 l. 11 s. 8 d. de vero debito p̄dict p̄-  
 fat' P. virtute ville p̄dict ut p̄mittit' de-  
 bit' secundum ratam se atting' ad 6 l. 3 s. &  
 1 d. quos quidem 6 l. 3 s. & 1 d. idem T.  
 C. postea & infra p̄dict unū mensem p̄r se  
 quēd postquam p̄dict P. S. Scrip̄t' p̄dict  
 hic in Cur̄ plat' in forma p̄dict sigillavit  
 subscripsit & ut factum suū delibavit scilicet  
 24 die April' Anno Regni dicti Dom̄i  
 Regis nunc Angl 8 apud L. in Paroch  
 & Ward p̄dict obtulit ad solvend p̄fat' P. ex-  
 istēd iuxta p̄dict ratam 7 s. p̄ qualibet libz'  
 sive 20 s. de vero debito in satisfactōd & ero-  
 neraōd p̄dict 7 l. 11 s. 8 d. p̄fat' P. vir-  
 tute ville p̄dict ut p̄feri' debet' secundum for-  
 mam & effectū Scripti p̄dict hic in Cur̄ p̄-  
 lat', quos quidem 6 l. 3 s. & 1 d. p̄dict P.  
 de eodem T. C. recipere adtunc & ibidem  
 penitus recusavit, cum hoc quod idem T. C.  
 verificare vult quod p̄dict debitum 27 l. 11 s.  
 & 8 d. in Parr p̄dict sup̄ius spec' non fuit  
 aliquod p̄dict dehorū in scripto p̄dict hic in  
 Cur̄ p̄olat' spec' p̄ quibus p̄dict T. W. &  
 p̄fat'.

Plat' T. C. conjunctim & divisim fletur & fusi  
 et obligat' Et sic idem T. C. in facto die  
 quod p'dict' P. p' Script' p'dict' hic in Cur'  
 plat' relaxabit & exponerabit eundem T. C. de  
 p'dict' villa obl' & de ho p'dict' eidem P. vir-  
 tute bill' ill' debet' Et hoc parat' est verifi-  
 care Unde per' judic' si p'dict' P. Action' su-  
 am p'dict' inde vers' eum habere debeat, &c.  
 Vide 1 Brown's Ent. 190, 191, &c.

*Bar in Debt per Literam Licenc' placitat'.*

**E**T p'dict' J. W. p' C. P. Attorn' su-  
 ven' & defend' vim & insur' quando,  
 &c. Et die quod p'dict' J. S. Action' suam  
 p'dict' vers' eum habere non debet quia die  
 quod ante confectonem Script' obl' p'dict' &  
 ante impetrac' brevis original' p'dict' scilicet  
 29 die Febr' Anno Domini 1690. p'dict' J.  
 W. litime indebitat' fuisse eidem J. S.  
 in p'dict' 60 l. ac quibusdam R. B. G. R.  
 &c. sparatim in diversis al' denar' summis vi-  
 delicet apud P. p'dict' Et sic inde indebitat'  
 existend' eidem J. S. R. B. &c. postea scilicet  
 eidem die & Anno apud P. p'dict' p'  
 quoddam Scriptum suum sigillis suis signat'  
 & hic in Cur' plat' gerend' dat' eidem die &  
 Anno recitando quod dictus J. W. tunc fletit  
 indebitat' p'fat' separat' Creditoribus in di-  
 versis sumis monete quas ratione longi & te-  
 diofi imprisonamenti non potuisset eis satis-  
 facere, absq' aliquo tempore dat' ei per ipsos  
 P. satisfactio' separat' debil' suorum deder' &  
 concesser'



concesser' & quilibet eorum dedit & concessit  
 eidem J. W. plenam & liberam libertatem &  
 salbum conductum vocat' Safe Conduct p' ple-  
 no sine & Termino trium integroz anno-  
 rum tunc pr' sequend' post dat' ejusdem Scrip-  
 ti absq' aliqua disturbanc', Angl' Let, sive mo-  
 lestacōne quibuscunque Idemque J. S. & pā  
 R. W. G. R. &c. per Scriptum ill' convener'  
 ad & cum dicto J. W. quod si aliquis eoz  
 arrestaret sive molestaret dicit' J. W. bona  
 sive serviciū p' aliquo deho tunc debet', An-  
 glice due, sive debet', Anglice owing, quod de-  
 bet' foret eis per billam obligatoriam script'  
 obl' vel aliter quod tal' dehum exonerat' fo-  
 ret imppetum vers' eos vel aliquem eoz  
 placitando Anglice, by pleading, Script' ill'  
 hic in Cur' plat' in barram in exoneracon  
 alicujus talis arrest' sive detencon p' sone sive  
 bonoz ipsius J. W. p' aliquo debet', Anglice  
 due, seu debetur', Anglice to be due, alicui eoz  
 dictozum Creditorum ut supradict' est durand'  
 dicto Termino trium Annozū put p' Script'  
 ill' hic in Cur' p'olat' plenius apparet Et  
 idem J. W. in facto dic' quod post confec-  
 con Script' ill' & infra p'dict' Termd' trium  
 annozū scilicet Termino Scti Michis An-  
 no Domi 1693. ipse idem J. S. prosecut'  
 fuisset extra Cur' hic scilicet apud Westm  
 in Com' Midd' quoddam breve eozundem Re-  
 gis & Regine de Capias ad respondend' vers'  
 eund' J. W. tunc Vic' Civic' R. p'dict' di-  
 rect' p' quod eidem tunc Vic' p'dict' p'cept'  
 fuit quod caperent eundem J. W. si inveni'  
 foret infra balliam eozundem Vic' Et cum  
 salvo Custod' ita quod haberent Corpus ejus  
 eozam



coram Justic Domini Regis & Dñi Rñe  
 hic scilicet apud Westm̄ pdict a die S̄ci Mar-  
 tini in quindecim dies illo eodem Termino  
 ad respond eidem J. S. de p̄lito trans' aceria  
 in quodam placito de hi sup demand pdict 60 l.  
 Et quod iidem Wic haberent ibi bzeve ill'  
 quod quidem bzeve idem J. S. postea & ante  
 retoznd inde scilicet 10 die Robend Anno  
 Domini 1693. supradia' apud R. pdict' qui-  
 busdam C. C. & J. H. tunc Wic R. pdict  
 in forma juris exequend deliberabit. Idem-  
 que J. W. postea & ante retoznd bzevis ill'  
 scilicet eidem die & anno apud R. pdict p  
 eosdem Wic ad requisitōd ipsius J. S. sup  
 bzeve ill' arrestat' fuit Et hoc parat' est veri-  
 ficare Unde pet judic' si pdict J. S. Action  
 suam pdict vers' eum habere debeat, &c. Vide  
 Clift's Ent. 148.

*Aliter*, The Defendant pleads the Letters of  
 Licence of the Plaintiff, and other his Cre-  
 ditors, and shews how he was sued in the  
 Marshal's Court, and removed by *Habeas*  
*Corpus*.

ff. **A**FTER Setting forth the Letters of  
 Licence, and the whole Proceedings  
 in the Marshal's Court, with several Days  
 given for Imparlance, with their Continuances,  
 then he sets forth a Removal of the Cause  
 by the Defendant in the King's Bench as fol-  
 lows, ———— Ad quam quidem p̄r' Cur,  
 &c.

&c. (recitañd separat' continuacon') Idem dies  
 dat' fuit p eand' Cur' ipsi p'fat' J. P. & S.  
 P. ibidem, &c. Ad quem diem postea scilicet  
 diem Mercurii pr' post tres Sept' S'ci  
 Michis ult' p'erii' scilicet 23 die Octobr'  
 Anno Domi 1661. in Cur' Domini Regis  
 hic scilicet coram ipso Rege existend' apud  
 Westm' veñ ipse p'dict' S. P. & petiit bre-  
 ve dicti Dñi Regis de Habeas corpus ad fac'  
 & rec' Judicibus Cur' dicti Domi Regis Pal-  
 latii sui Westm' p'dict' dirigend'. Et ei con-  
 cedebat' p quod quidem breve idem Dominus  
 Rex mandavit dict' judic' quod corpus p'dict'  
 S. P. in custod' sua ut tunc dicebat' detent'  
 sub salvo & secur' conduci' unacum die & Causa  
 cap'conis & detentionis sue quocunque nomine  
 idem S. P. censeret' in eadem herent sive  
 aliquis eor' heret coram T. T. Mil' und  
 Justic' ad placita in Cur' dicti Domini Re-  
 gis coram ipso Rege tenend' Assign' ad Ca-  
 meram suam situat' in Serjeants Inn Fleet-  
 street London, immediate post reception' bre-  
 vis p'dict' ad fac' & recipiend' ea omnia & sin-  
 gula que idem Justic' de eo adtunc & ibidem  
 consideraret in ea parte Et quod habeant ibi  
 tunc hoc breve Quod quidem breve Judic' p'd'  
 postea scilicet eisdem die & Anno retorñ u-  
 nacum corpore esuldem S. P. parat' coram  
 eodem Justic' put eis p breve p'dict' p'cept'  
 fuit, Qui quidem S. P. postea scilicet eis-  
 dem die & Anno apud Cameram p'dict' T. T.  
 und Justic' p'dict' situat' in Serjeants Inn in  
 Fleet-street p'dict' in Paroch S'ci Dunstani  
 in Occiden in Warda de S. Lond' p p'dict'  
 T. T. und Justic' p'dict' traditus fuit in ma-  
 nucaption'

nucaption videlicet W. S. de Southwarke  
 Gen, &c. Et p̄d S. P. ulterius dic' quod  
 post tempus deliberationis ipsius S. P. in  
 manucaption Manucapi' supradict' scilicet die  
 & Anno ult' supradict' ipse p̄d S. P. apud  
 London p̄d in Paroch & Ward p̄d dedic  
 notic' p̄fat' J. P. quod ipse p̄d S. P. ar-  
 restat' prosecut' & perturbat' fuit ad sectam  
 ipsius p̄d J. p̄ p̄dicto de ho & adtunc requi-  
 sit' ipsum p̄d J. P. relaxare & exonerare,  
 Anglice to discharge, p̄d S. P. p̄dictus tamen  
 J. P. secund' p̄ed scriptum suum infra unum  
 mensem post requisiconem sibi fact' nec aliquo  
 tempore postea exonerabit p̄ed S. P. de p̄d  
 Arrestatione sed postea scilicet die sabbati pr'  
 post tres Septim' d'ci Michis narrabit ver' &  
 p̄fat' S. P. de placito supradicto prout p̄  
 Narr' suam supradict' apparet Et de Record  
 in Cur' Domini Regis hic coram ipso Rege  
 plenius liquet Et hoc, &c. Unde, &c. Vide  
 Thomp. Ent. 169, 171.



Defendant pleads the Statute of Composition,  
for two Thirds in Number and Value.

**N.** **E** pōia' J. per . . . Attozū suū  
ven' & fefend' vim & insur' quando, &c.  
Et dic' quod pōict' J. Action' suam pōict'  
vers' eum hēre non debet Quia dic' quod  
per quendam Actū in Parliament' Domini  
Regis nunc apud Westm' in Com' pōict'  
20 die Octobr' Anno Regni sui 8 per sepa-  
rales ppozogaōnes tent' edit' Inaūitat' fuit  
Authoritat' ejusdem Parl' (inter alia) Quod  
liceret & licitum foret ad & p duabus tertiis  
partibus vel plur' in numero & valore om-  
nium Real' Creditor' eoz' Exec Adm' Guar-  
dian' & fiduciar' & al' person' autorizat' p eos  
vel aliquem eozum facere tale Agreement si-  
be composicioē qual' putarent apt' & raōnas-  
bil' cum aliquibus de Debitorib' suis qui ex-  
isten' inhiles ad solvend tot' Deba sua se-  
ipm' vel seipsos subtraxerunt vel absconderunt  
ab usual' locis eoz' cōnozancie sive fuer' aut  
debener' prisonat' p debito ante 17 diem No-  
vem' Anno Dom' 1696. Et quod quodlibet  
tale Agreement vel Composicio fact' existēd'  
p equali beneficio omnium Creditorum in  
ppozōne ad respectiva deba sua ac subscript'  
& sigillat' p pōict' duas tertiās partes vel plu-  
res in valore absq' aliquo secreto fraudulento  
vel collateralī Agreement' p aliquo majori  
advantagio quam in eodem expzess' foret ob-  
ligaret

ligaret & concluderet omnes al' Creditores  
 Execut' Administr' Guardianos & Fiduciar' suos  
 & omnes personas authorizat' p' vel claman'  
 subter eos vel aliquem eorum tam plene &  
 effective ad omnes intenções & p'posita quam  
 si omnes & quilibet eorum actualit' fecisset &  
 subscripsisset ac sigillasset vel fecissent & sub-  
 scripsissent ac sigillasset tal' Agreement' vel  
 compositionem & null' Execut' Adm' Guardi-  
 an' vel Fiduciar' foret onerabil' vel computabil'  
 pro plur' quam ipse vel ipsa reciperet proinde,  
 aliqua p'iori Lege in contrar' in aliquo modo  
 non obsta' put' p' eund' Actum (inter alia)  
 plenius liquet & apparet. Et idem J. ulte-  
 rius die' quod ipse idem J. ante edicōd' Aa'  
 p'dict' scilicet primo die Novem' Anno Dñi  
 1696. supradicto & diu antea fuit usualit'  
 comorans apud L. viz. in Paroch, &c.  
 Quodque ante edicōd' Aa' ill' scilicet eodem  
 primo die Novem' Anno Domini 1696, su-  
 pradict' apud L. p'dict' in Paroch & Ward p'd-  
 vere & iuste indebitat' fuit respectib' personis  
 Creditoribus suis postea nominat' in respecti-  
 bis denar' sumis postea spec' & non am-  
 plius scilicet L. C. in 60s. C. D. in  
 5 l. &c. & p'dict' J. modo quer' in 51 s. Qui  
 quidem separales Creditoz' p'rendiat' adtunc  
 fuer' omnes reales Creditores ipsius J. A.  
 Et p'dict' J. M. ulterius die' quod ipse p'dict'  
 J. A. ante super & post p'dict' 17 diem No-  
 vem' Anno Domini 1696. pro Debo & rōnd'  
 deborum suorum p'dict' seipm' ab usuali loco  
 videlicet domo abscondidit & subtraxit vides-  
 licet apud L. p'dict' in Paroch & Ward p'dict'  
 & adtunc & ante fuit & adhuc existit inha-  
 bilis



bilis ad solvendū tota deba p̄menconat'. Ipsos  
 q̄ J. A. sic abscondit' & subtrahit' p̄ Dehis sus  
 is p̄dict' due certie partes in numero & va  
 loze omniū real' Creditorum ipsius J. A. antea  
 & super eund' 17 diem Novemb' Anno Domi  
 1696. suprad' existēd' & adinde continuand' &  
 existēd' Creditor' ejusdem J. A. usq; ad & su  
 per 10 diem Sept' Anno Regni Domini Re  
 gis nunc nono scilicet p̄dict' C. C. C. D.  
 J. H. D. R. S. D. T. D. M. R. & R. S.  
 eodem 10 die Sept' Anno 9 suprad' apud L.  
 p̄dict' in Paroch' & Ward p̄dict' per quod  
 dam Scriptum p̄ p̄dict' duas tertias partes &  
 plures in numero & baloze omnium real' Cre  
 ditorum ipsius J. A. respective subscript' &  
 sigillat' quod idem J. A. sub manibus & si  
 gillis suis signat' hic in Cur' p̄fert cujus  
 dat' est eisdem die & Anno suprad' virtute p̄  
 dict' Parliament' Agreementum & compositio  
 nem cum eodem J. A. (ad tunc inhabilis ex  
 istēd' ad tota deba p̄d' solvend') de omnibus  
 Dehis eis respective per eund' J. A. debit'  
 fecer' ac p̄ idem Scriptum separatim declara  
 ver' quod ipsi content' fuer' & agreeaver' quod  
 dictus J. A. immediate extunc liberaret' & exo  
 neraret' ab ejus tunc restricōne & Impriso  
 nament' & quod haberet libertatem & p̄sonam  
 ejus libm ab aliquo arrest' sive molestatione  
 per spacium quatuor Annorum extunc p̄or'  
 sequend' dat' Scripti ill' ratione eoz d̄cor'  
 T. C. C. D. J. H. D. R. &c. & aliorum  
 Creditorum dicti J. A. supradict' Proviso sem  
 per & sub Condicōne tamen quod si dictus  
 J. A. Cree Adm vel Assign' sui sive ali  
 quis vel uterque eorum deberent & vellent  
 (Part IV.) X bene



bene & veraciter solvere seu solvi causare ipsi  
 sis dictis Creditoribus & cuilibet eorum separa-  
 ralibus & respectivis Cree Adm & Assign  
 suis erga satisfactio dictorum legal' & respec-  
 tivozum debitozum suorum infra spaciū quatuor  
 annorum antea limitat' sumam 19 s. per  
 libz' videlicet 19 s. p qualibet respectiva libra  
 sive viginti solidis que fuer' ad tunc debit' & de-  
 bend, Anglice owing, eis seu alicui sive utriusq  
 eorum p dcm J. A. in plena satisfactione  
 eorū dcoz legal' & respectivozum debit' secundū  
 dcm compositionem quod tunc Script' illud  
 foret & p idem Scriptum declarat' fuit fore  
 dicto J. A. Cree & Adm suis bona legalis &  
 sufficiens Generalis Relaxatio & in Rege &  
 Equitate contra eos omnes aliquem & quem-  
 libet eorum p eisde' debis debit' & debend eis  
 & cuilibet eoz' p eund J. A. ut pferit' put  
 p Script' illud int' alia plenius liquet & ap-  
 paret Que quidem Compositio sicut pferit' fact'  
 fuit p equali beneficio omnium Creditor' ipsi-  
 us J. A. in pportione ad respectiva deba sua  
 absq aliquo secreto fraudulent' seu collateral'  
 agreement' p aliquo majore advantage quam  
 in eodem scripto supius exprimit' videlicet a-  
 pud L. pdict in Paroch & Ward pdict Ro-  
 ne quorum quidem pmiss' nec pdict J. A.  
 nec pdict al' Creditor' ipsius J. A. neque  
 aliquis alius Creditor ejusdem J. A. pro al-  
 liquo debito eis vel eorum alicui ad vel ante  
 pdict 17 diem Novemb Anno Dom 1696.  
 supradict' debit' ipsum J. A. ad aliquod tem-  
 pus infra pdict spaciū quatuor Annor a  
 pdict 10 die Sept' Ann 9 suprad' prior'  
 sequend aliquo modo implere sectare prosequi  
 seu

seu molestare debet sive debent. Quodq; p<sup>o</sup>  
 spacium 4 annorum p<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> Creditor<sup>o</sup> ipsius  
 J. A. eidem J. A. dat<sup>o</sup> pro solutione p<sup>o</sup>dict<sup>o</sup>  
 19 s. pro qualibet respectiva lib<sup>o</sup> sive 20 s. que  
 fuer<sup>o</sup> adunc debet<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> Creditor<sup>o</sup> ejus-  
 dem J. A. alicui sive utriq; eorum tempore  
 levationis Querel<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> vers<sup>o</sup> ipm J. A. non  
 fuit nec adhuc est expirat<sup>o</sup> Et p<sup>o</sup>dict<sup>o</sup> J. A.  
 Alterius die quod due certie partes in nu-  
 mero & valore omnium Real<sup>o</sup> Creditor<sup>o</sup> ipse  
 us J. A. ante diem lavacion<sup>o</sup> Querel<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> scie-  
 licet p<sup>o</sup>dict<sup>o</sup> 10 die Septemb<sup>o</sup> Anno 9 sup<sup>o</sup>as-  
 p<sup>o</sup>dicto Scriptum illud sigillaver<sup>o</sup> & subscripser<sup>o</sup>  
 videt<sup>o</sup> apud N. p<sup>o</sup>dict<sup>o</sup> in Paroch<sup>o</sup> & Ward p<sup>o</sup>  
 Absq; hoc quod p<sup>o</sup>dict<sup>o</sup> J. A. super se assump-  
 sit ad aliquod tempus post 16 diem Novemb<sup>o</sup>  
 Anno Dom<sup>o</sup> 1696. sup<sup>o</sup>radicto modo & forma  
 prout p<sup>o</sup>dict<sup>o</sup> J. A. ibidem vers<sup>o</sup> eum querit<sup>o</sup>  
 Et hoc parat<sup>o</sup> est verificare Unde per<sup>o</sup> judic<sup>o</sup>  
 si p<sup>o</sup>dict<sup>o</sup> J. A. Action<sup>o</sup> sua p<sup>o</sup>dict<sup>o</sup> antequam  
 deficeret in solutione secund<sup>o</sup> formam & effec-  
 tum Composition<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> faciend<sup>o</sup> vers<sup>o</sup> et<sup>o</sup> has  
 vere debeat, &c. Cum hoc quod ipse idem  
 J. A. verificare vult quod denar<sup>o</sup> in Part<sup>o</sup>  
 p<sup>o</sup>dict<sup>o</sup> J. p<sup>o</sup>dict<sup>o</sup> menconat<sup>o</sup> non sunt Except<sup>o</sup>  
 & ull<sup>o</sup> Exception<sup>o</sup> vel p<sup>o</sup>viso quoscunq; in Ac-  
 tu p<sup>o</sup>dict<sup>o</sup> content<sup>o</sup>, &c. Vide Clift's Ent. 156,  
 157, &c.



Aliter.

SEE 1 *Lutwych* 614. where to a Bond for Debt, the Defendant after Oyer pleads the said Act for Composition in manner following.——Quibus lectis & auditis idem J. dicit quod p̄dict S. Actionem suam p̄ inde versus eum Here seu manutenere non debet Quia dicit quod per quendam Accum Parliamenti fact' ad Parliament' inchoat' apud Westm̄ in Com̄ Widd 22 die Novem̄ Anno Domini 1695. & abinde continuat p̄ sepa- rales prorogationes & adjournament' usq; 20 diem Octob̄ Anno Domini 1696. & tunc & ibidem tent' Recitando quod cum multi De- bitores inhabiles facti, Anglice disabled, per tempna & infortunia ad solvend tota deba sua fuer' sepe volentes ad faciend quam satisfactio- nem potuer' pro eisdem ita quod gauderent libe- rat' suis sup rōnabil' Agreement' vel Com- positionem sed quidam pauci Creditores insisten- tes sup tot' Debis suis & Executor' Admini- Guardiani & Fiduciar', Anglice Trustees, ex- istend incapacitat' ad faciend aliquam Compo- sitionem, tales Debitoress desperand ad vident finem eorum perturbationem transportaver' se ipsos & effectus suos ultra Mare vel consump- ser eosdem in Prisonis aut Prens' p̄vilegiat' locis ad extremam ruinam suam & de- vener' inutiles Regno & Familiis suis onus Relationibus suis sive Paroch in quibus vixer Et omnes Creditores sui p̄dict quod Heri possent pro debis suis, Pro remedio Quorum inter



inter alia Inactitat' fuit authoritat' ejusdem  
Parliamenti quod liceret & licitum foret pro  
duabus tertiis partibus in numero & valore  
omnium real' Creditorum eorum Grege' Adm  
Guardian' & Fiduciar' & al' pson' authorizat'  
p eos vel aliquem eorum facere tal' Agree-  
ment' seu Compositionem, &c. (and so recites  
the enacting Part, that two Thirds of the  
Creditors might make Agreement with their  
Debtors, who had absconded, or were Priso-  
ners for Debt before 17th of *November* 1696,  
&c. And the Defendant confesses the Bond  
to the Plaintiff, but that upon and before the  
17th of *November* he was indebted to divers  
Persons, &c. and sets forth their Names and  
Debts; and what was principal Money; with  
an Averment that the said Debts were all the  
Debts, which he owed at any the said Times.  
That he absconded for Debt before the said  
17th of *Novemb.* and his Composition made  
the First of *May* 1697. to accept 10 s. *per*  
Pound, so that it should be paid within Se-  
ven Months, with an Averment that the Com-  
position was for the equal benefit of all the  
said Creditors, &c. That he had paid the  
other Creditors according to the Composition,  
and Notice given to the Plaintiff of the Com-  
position, and Tender of the Composition Mo-  
ney to the Plaintiff, and that the Plaintiff refused  
to accept it, and that he is yet ready to pay,  
and tenders the Money in Court. To this  
the Plaintiff demurs, and the Defendant joins  
in the Demurrer.

And upon the Argument these Exceptions were taken to the *Bar*.

1. That the Beginning of the Plea, and also the Conclusion of it being with a Demand of Judgment, *fi Actionem*, &c. was ill.

2. That it was not alledged, That the Composition was made in the Time of the King, but only in *Anno Dom'*, &c.

3. That it is said, That the Defendant absconded before the 17th Day of *November*, before the Act, when he ought also to have averred, that he absconded upon the said Day.

4. That he should have averred, That the Debts mentioned in the Plea were all the Debts that he owed at the Time of making the Composition.

5. That the Composition was, That some of the Creditors should have 10 s. *per l.* for their principal Debts and also for the Interest due upon the same, and some of them were to have the said 10 s. *per l.* for their principal Debts only; and by the Act, the Composition is to be made for the equal Benefit of all the Creditors.

6. That the Venue is laid at *Warwick*, and the Defendant had pleaded transitory Matters in *Bar*, and had alledged them to be made at *Rugby* in *Com' War'*, and that he could not alter the Venue by pleading transitory Matters in *Bar*.

The Court seemed to be of Opinion (says the Reporter) That the *Bar* was good notwithstanding all the said Exceptions, except the last. And although the Defendant's Counsel insisted, That *Warwick* was

was in the Margin of the Declaration, which is to be intended the County of *Warwick*, and that in the Declaration it is said that the Bond was made at *Warwick*, which should refer to *Warwick* in the Margin; yet Judgment was given for the Plaintiff. And the Court declared, That Judgment was only given for the last Exception. See the said *Lut. Ent. part 1. fo. 618.*

In another Action of Debt upon Bond, the Defendant pleaded the said Act for Composition in *Bar, viz.* That 10 Junii 1697. the greater Part of his Creditors in Number and Value (naming them) by writing of Agreement produced in Court under their Hands and Seals, compounded and agreed with him to accept 1 *s. per l. &c.* and so proportionably for a lesser or greater Sum, *&c.* To which Plea the Plaintiff demurred, and the Exceptions following were taken to the Plea.

1. That the Defendant ought to have pleaded, That he had given the Plaintiff Notice of the Composition.

2. That he ought to have made a Tender in Court of the Money, to be paid to the Plaintiff by such Composition.

3. That the said Composition ought to have been pleaded as a Release. *Trin. 12. W. 3.* Judgment was given for the Plaintiff upon the Two first Exceptions: And thereupon Justice *Powell* said, that the Court did not determine how this Matter was to be pleaded. And Chief Justice *Treby* said, that a Release upon Condition, That the Releasee should pay to the



Releasor so much Money, is not good ; but if the Release had been, That if the Releasee should pay so much at a Day to come, then he released, &c. such is a good Release, 21 H. 7. 23. and 21 H. 7. 30. Vide 1 Lut. 635, 638.

*Trin. 4 Annæ Reginae, Webb vers' Shackelton.*

Debt upon Bond. Defendant after Oyer of the Bond and Condition, pleads the Act of 1 *Annæ Reginae*, for Relief of poor Prisoners.

ff. **E**T modo, &c. Et idem Robertus defendit vim & injur' quando, &c. Et pet' auditu, &c. Quibus lect' & audit' idem R. dicit quod ipse non potest dedicere Actonem ipsius J. nec quin Script' Dicit p'dict sic factum ipsius R. nec quin ipse p'dict J. debum suum p'dict vers' eum recuperare debeat de terris tenentis & hereditament' & bov' & catall' ipsius R. (Jesus Apparatus, Anglice wearing Apparel, Lectur', Anglice Bedding, & Instrumentis, Anglice Tools, necessar' pro Arte sua non exceden' valent' 10 l. tantummodo except') Sed idem R. ulterius dicit quod p'dict J. executionem inde vers' p'sonam ipsius R. habere non debet Quia dicit quod p' quendam Act' in Parl' apud Westm' in Com' Widd' 30 die dec' Anno regni Dñi Will' tertii nuper Regis Angl', &c. 13. & ibm continuat' usque ad 8 diem Martii Anno regni Dñe Anne Regine Angl'. &c. primo edit' & provis' (int' al') Instructat' fuit auctoritate ejusdem Parl' quod ubi aliqua person' fuisset actualit' in custod' Gaolarii

Gaolarii vel custod Prison vel Prisonar' in-  
 fra Civit' London Westm Com Midd  
 Surr seu aliquar partiu regni Angl Com  
 Wallie seu Will Berwici sup Tweed & non  
 infra regul de Banco Regis seu de le Fleet  
 sup vel antea primum diem Januarii 1701.  
 p Debo vel dampnis aut p aliquibus Accōd  
 vel Accōd sive sup aliquem medium pcess',  
 Anglice mean Process, p Debo vel Dampnis  
 vel qui potuisset Here aliquod Judic' vel Ju-  
 dicia intrat' sup Record' vers' ipsum vel fuit  
 it onerat' in execution' vel imprisonat' super  
 contempt' vel Attach p debo vel super  
 Uclagat' ante vel post Judic' vel super ali-  
 quem at pcess quemcunq p aliquo debo sum-  
 ma vel summis monet' qui invent' fuisset  
 vel devenisset tam pauper quod, &c. (and so  
 recites the Act to the Oath, ad tal effectum ut  
 deest quod ipse non fuit aliquem Statum, &c. and  
 so on in Latin to the Proviso for the Prisoner  
 to list himself a Soldier) Proviso semper quod  
 nullus homo infra etat' 40 annorum exoner-  
 rat' esset ab ejus imprisonament' vel heret  
 aliquod benefic' vel advantag virtute ejusdem  
 Act' vel allicus rei in eodem Actu content'  
 nisi tal' homo vel psona ante ejus exonacōd  
 voluntarie intraret, Anglice list, seipsum mi-  
 litem sub aliquo Officiar' vel Officiar' Exercit'  
 vel in Classe, Anglice on Board the Fleet,  
 Dñe Regine aliquo in eodem Actu antea  
 content' in contrar in aliquo non obstant put  
 p eund Act' inc' at plenius liquet & apparet  
 Et idem R. in facto dic' quod ipse idem  
 R. pdicto primo die Jan Anno Dñi 1701.  
 supradict' & antea fuit Prisonar' in Prisona &  
 sub



sub actuali custod' S. J. custod' Prisonis nup  
 Dñi Regis Will' tertii de White Chapel p  
 Maniis de Stepney & Hackney in Com' Midd  
 & in Prison de W. C. adtunc & ibm ex-  
 istend' onerat' virtute cusu'dam brevis exeu'd  
 e Cur' dicti nup Dñi Regis de Recordo p  
 Maneris de S. & H. p'dict' retornabile apud  
 W. C. p'dict' 19. die Dec' Anno Dñi 1700.  
 ad respond' cuidam J. B. in p'lito trans' sup  
 Casum ad Dampnu' ipsius J. 39 s. Et idem  
 R. adtunc & ibm fuit tam pauper quod ipse  
 non fuit quocid' potuit manutenere seipsum  
 in Prisona sine existend' onerosus affinibus  
 suis Et supinde idem R. postea scil't 31 die  
 Julii Anno Dñi 1702. exhibuit quandam peti-  
 tionem suam Justiciariis Dñi Regis nunc ad  
 Pacem pro Comd' Midd' p'dict' conserband' as-  
 sign' apud General' Quarterial Session' Pas-  
 cis pro Comd' p'dict' tent' p' adjozament' a-  
 pud Hicks-Hall in vico vocat' St. John's Street  
 in Comd' p'dict' eisdem die & anno ult' men-  
 conat' Et p' eandem supplicabit quod ipse idem  
 R. admitteretur here & recipere beneficium  
 Act' p'dict' Et supinde p' eosdem Justic' ad-  
 tunc & ibidem assemblat' Ordinat' fuit quod  
 p'dict' Custos Prison' de W. C. p'dict' duce-  
 ret eundem R. unacum causis Deten'con  
 sue coram Justic' dicte Dñe Regine ad Pa-  
 cem pro Comd' p'dict' conserband' assign' apud  
 H. H. p'dict' die Jovis 6 die Aug' adtunc  
 prior' sequend' ad p'stand' Sacram' in eodem Actu  
 men'conat' & fore examinand' prout Actus p'd  
 requireret Et quod p'dict' J. adtunc & ibm  
 compareret ad ostendend' causam si poterit  
 quare idem R. a Prisona p'dict' non exone-  
 raretur



aretur Et dem R. postea scilicet tercio die  
 Aug' Anno Domini 1702. apud W. C. p<sup>o</sup>  
 n Com<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> dedit noticiam p<sup>o</sup>fat<sup>o</sup> J. R. in  
 scriptis de inten<sup>o</sup> sua recipere beneficium  
 Ac<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> & adtunc & ibm p<sup>o</sup>fat<sup>o</sup> J. de ho  
 modo summonitus fuit p<sup>o</sup> quendam J. W. ad  
 stens & comparend<sup>o</sup> coram Justic<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> apud  
 W. H. p<sup>o</sup>dict<sup>o</sup> eob<sup>o</sup> 6 die Aug<sup>o</sup> anno supradicto  
 secundum formam & effectum Ac<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> Et  
 dem R. ulterius dic<sup>o</sup> quod postea scilicet eodem  
 sexto die Aug<sup>o</sup> anno supradict<sup>o</sup> ad Genera<sup>o</sup>  
 Quarterial<sup>o</sup> Session<sup>o</sup> Pacis dicte D<sup>ne</sup> Regine  
 dtunc tent<sup>o</sup> p<sup>o</sup> Adjozament<sup>o</sup> apud W. H. p<sup>o</sup>  
 n Com<sup>o</sup> Widd<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> pro Com<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> idem  
 R. compuit coram J. P. W. H. & C. C.  
 & aliis Sociis suis tunc Justiciar<sup>o</sup> Pacis dicte  
 D<sup>ne</sup> Regine in & pro Com<sup>o</sup> Widd<sup>o</sup> p<sup>o</sup>dict<sup>o</sup>  
 dtunc & ibm p<sup>o</sup>stitit Sacram<sup>o</sup> in Actu p<sup>o</sup>dict<sup>o</sup>  
 upius men<sup>o</sup>onari<sup>o</sup> & content<sup>o</sup> Et ulterius jura  
 vit quod ipse idem R. nulla h<sup>o</sup>it bona seu  
 catalla sibi p<sup>o</sup>tinend<sup>o</sup> & quod null<sup>o</sup> debum sive  
 p<sup>o</sup>eba adtunc fuit vel fuer<sup>o</sup> debi<sup>o</sup> eidem  
 R. Et supinde idem R. ad eand<sup>o</sup> Genera  
 al Quarterial<sup>o</sup> Session<sup>o</sup> Pacis tent<sup>o</sup> in & pro  
 Com<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> eodem sexto die Aug<sup>o</sup> (p<sup>o</sup>fat<sup>o</sup> J.  
 R. adtunc & ibm non comparend<sup>o</sup> p<sup>o</sup> Justic<sup>o</sup>  
 dicte D<sup>ne</sup> Regine modo e<sup>o</sup> Prisona exone  
 rat<sup>o</sup> & dimiss<sup>o</sup> fuit secund<sup>o</sup> form<sup>o</sup> & effectum  
 Ac<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> prout p<sup>o</sup> quendam Duplica<sup>o</sup>on<sup>o</sup> ex  
 onera<sup>o</sup>on<sup>o</sup> sue sub manibus & sigill<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> J.  
 P. W. H. & C. C. Justic<sup>o</sup> Pacis dicte D<sup>ne</sup>  
 Regine in & pro Com<sup>o</sup> Widd<sup>o</sup> p<sup>o</sup>dict<sup>o</sup> adtunc  
 existend<sup>o</sup> & quam idem R. hic in Cur<sup>o</sup> p<sup>o</sup>fert ple  
 nius apparet Cum hoc quod idem R. verificare  
 vult qd ipse idem R. non fuit detent<sup>o</sup> in Prison<sup>o</sup>  
 p<sup>o</sup> p<sup>o</sup> aliqua al<sup>o</sup> causa quam ad Sect<sup>o</sup> p<sup>o</sup>fat<sup>o</sup> J. R. ut  
 p<sup>o</sup>fertur

fertur Et p̄dict̄ idem R. tempore exoneraçōis  
 sue p̄dict̄ fuit plene erat' 40 annorum & am-  
 plius videt' apud W. C. p̄dict̄ Et quod  
 ipse idem R. remanet in Prisonsa de W. C.  
 p̄dict̄ p̄ sp̄ac̄ sex mensium ante p̄staçōis  
 Sacri' sui p̄dict̄ Et quod ipse idem R. tem-  
 pore exoneraçōis sue p̄dict̄ non fuit nec ste-  
 tit indebitat' alicui un̄ plone in maiori sum-  
 ma quam 20 l. pro p̄ncipal' Debit' Et idem  
 R. ulterius in facto dic' quod p̄dict̄ summa  
 12 s. in conditione ejusdem Scrip̄i' Obl̄  
 hic sup̄ius mentionat' ultra p̄dict̄ summam  
 p̄dict̄ 20 l. in conditione p̄dict̄ sitit' spec' dat'  
 & agreeat' fuit fore solut' p̄stat' J. pro interesse  
 suo pro p̄dict̄ summa 20 l. & pro suo dan-  
 do & differendo diem solutiois earundem so-  
 lutionis eidem R. usque ad p̄dict̄ 24 diem  
 Dec' in Conditione p̄dict̄ mentionat' videt'  
 apud W. C. p̄dict̄ in Com' p̄dict̄ Et p̄dict̄  
 summa 12 s. fuit nulla pars p̄ncipal' summe  
 p̄eund' R. de p̄stat' J. ut p̄fertur mutuat' & ei-  
 dem J. debit' Unde idem R. per' judic' si  
 p̄dict̄ J. executionis suam vers' eum in hac  
 parte p̄terquam sup' terras tēta hereditamen-  
 ta bona & catall' ipsius R. (ejus apparatu  
 Mozati & instrumentis necessariis p̄ Arte sua  
 non excedēd' summam 10 l. in valor' tan-  
 tummodo except') sed non super personam ip-  
 sus R. levand' & exequend' here debeat, &c.

Jo. Darnell.

Et

Et p̄dict J. W. dic' quod ipse p̄ aliqua p̄ Demurr'  
 p̄fat R. S. supius p̄litando allegat' ab Ac-  
 tione sua p̄dict inde vers' ipsū R. hēd  
 p̄cludi non debet Quia dic' quod p̄litum p̄-  
 dict' p̄ ipsum R. supius p̄litat' materiāq; in  
 eodem content' minus sufficiēd in Lege exist'  
 ad ipsum J. ab Actione sua p̄dict vers' ip-  
 sum p̄dict R. hēd p̄cludend Ad quod ipse is-  
 dem J. necesse non habet nec p̄ Legem terre  
 tenetur aliquo modo respondere Et hoc parat'  
 est verificare Unde pro defectu sufficiēd res-  
 pons' in hac parte idem J. pet' Judicium &  
 debum suum p̄dict unacum dampnis suis oc-  
 catione detentionē Debi ill' sibi adjudicari, &c.  
 Et pro caus' morationē in Lege idem J. se-  
 cundum form' Statut' in hujusmodi Casu edit'  
 & probis' offendit Cur' hic quod p̄litum p̄-  
 dict est incertum & p̄ idem p̄litum nulla sit  
 mentio de aliqua noticia dat' p̄fat' J. de ex-  
 oneratione p̄dict' R. e Prisona.

Edward Whitaker.

Clarke Attorn' pro Quer'.  
 Wright pro Def.

Fitz:



Fitzgerald } To be Argued Trin. 4 Anna  
 vers' } Reginae in B. R. R. Stone Att  
 Delaval. } pro Quer' Lewellin pro Def.

Defendant pleads the Act of the Second of Queen Anne, for a Debtor to be discharged upon finding a Soldier, &c.

¶ **E**t modo ad hunc diem, &c. Et idem J. defendit vim & injuriam quando, &c. Et dicit quod ipse non potest dedicere Actionem predictam A. predicti nec quin ipse debet predictam A. predictam 200 l. in Partem predictam superius contentam modo & forma prout predictam A. superius verbum eum narrabit nec quin predictam A. debum suum per verbum eum recuperare debeat de terris tenentis hereditamentis & bonis & catallis ipsius J. (Apparat', Anglice wearing Apparell, lectur', Anglice Bedding. & necessarii instrument', Anglice Tools, per Arte sua non excedent 10 l. in valore tantummodo except') levand sed idem J. ultius dicit quod predictam A. executionem inde verbum personam ipsius J. Here non debet Quia dicit quod per quendam Actum in Parte Dñe Regine nunc apud Westm in Court Mios nono die Novembry Anno regni sui secundo per separatam proagationem & adjournamentum tenet editum, Recitando quod cum per Actum Partem factum in primo Anno regni dicte Dñe Regine nunc Intitulat' An Act for Relief of Poor Prisoners for Debt intens' & designat' fuisset virtute esuse

ejusdem Act' ad suppeditand, Anglice to sup-  
 ply, dicte Dñe Regine cum Soldiar, Anglice  
 Recruits, p mare ac eciam p terram durand  
 ad tunc instand bello quam etiam ad relevand,  
 Anglice relieve, eosdem pauperes Prisonar'  
 sed quia null' Prisonar' potuisset exonerari  
 virtute ejusdem Act' qui fuit indebitat' ultra  
 sum 20 l. pter custag' Sect' Et p eo quod  
 p dict' Act' null' fecisset pticular' direction  
 quomodo iidem Prisonar' seipsos admitterent,  
 Anglice list, sive intrarent seipsos in Servic'  
 dicte Dñe Regine dict' Act' non respondisset  
 intentioni p qua confect' fuit Ac ea de caus  
 sa ad suppeditand defect' qui obstruxiss' boni  
 intentioni, Anglice Ends, & pposit' dict' Act'  
 Inactitat' fuit authorizat' ejusdem Part' quon  
 licet & licitum foret ad & p Justiciar' Pacis  
 alicujus Com' Civit' Ville, &c. and so recites  
 the Act with the Oath ad effectum sequend  
 videlicet I A. B. do upon my Corporal Oath,  
 &c. quod quidem Sacram' dict' Justiciar' Pa-  
 cis ad suas General' sive Quarterial' Session  
 in apert' Cur' p dict' Actum authorizat' fu-  
 er, Anglice impowered, ad administrand & ex-  
 aminand sup Sacram' dict' Prisonar' sive ali-  
 quam at pson' de paupertat' talis Prisonar', &c.  
 (reciting the Act to the Listing a Soldier)  
 Provis' etiam quod nullus homo durand ad-  
 tunc ptesend bello cum Franc & Hispania fo-  
 ret exonerat' ab imprisonment suo sive ha-  
 beret aliquod benefic' sive advantag' p me-  
 dias sive virtute ejusdem Act' sive alicujus  
 Rei in eodem content' nisi tal' homo intras-  
 ret sive admitteret seipsum, Anglice list him-  
 self, in servicium dicte Dñe Regine p mare  
 sive



sive terr' & continuaret in tal' servic' durand' continuacōid adtunc p̄senti belli sive in ejus vice & loco procuraret robustum hominem, Anglice an able-bodied Man, intrari sive admitti & continuare in servic' Dñe Regine durand' dicto bello quelibet p̄son' sic admittend' foret admiss' coram vel p' tal' p̄son' vel p̄son' qual' dicta Dña Regina sub Regal' signo suo manual' appunctuaret p̄out p' eund' Act' int' al' plenius liquet & apparet Et idem J. in facto dic' quod ipse idem J. post confectōid script' obl' p̄dict' & ante editōid Act' Parl' p̄dict' supius ult' recit' scilicet p̄dict' octavo die Nov' Anno Dñi 1703. suprad' in eod' Act' supius menc' fuit Prisonar p̄o deho in Prisona Computatoz' p̄o Burgo de Southwark in Com' Surr' sub custod' Johnis Sylves adtunc & adhuc custod' ejusdem Prisona de Computatoz' existend' onerat' in custod' ejusdem Prisona ad sect' cuiusdam S. B. cum quadam Actōne in p̄lito trans' sup' casum ad dampnū ipsius S. 20 l. p̄o quibus idem J. habere potuisset Judiciū intrat' vers' eum de Record' ante p̄dict' 8 diem Nov' Anno Dñi 1703. supradic' videt' apud Paroch' S̄ci Salvatoris Southwark in Com' S. p̄dict' & adtunc non fuit onerat' in custod' p̄o aliquo Deho Fine sive Offens' ad sect' dñe Dñe Regine neque iterit onerat' in custod' p' aliqua major' summa quam Cent' Libz' p̄ncipal' Monet' vel Dampnū alicui und' p̄son', Quodque ipse idem J. adtunc & ibm fuit tam Pauper quod ipse non habuit cum quo ipse poterit manutenere seipsum in Prisona absq' onere, Anglice without being burthensome, Relationibus suis Et idem



dem J. ulterius in facto die' quod post edicōd  
 Act' Parl' pōict supius ad largum plicat' scilicet  
 10 die Octobr' Anno Dñi 1704 ad Petitiō  
 on ipsius J. cuidam J. R. aduunc und Justic'  
 dñe Dñe Rñe ad Pacem in & p Comd S.  
 pōict conserband assign' apud Paroch de R.  
 sup T. in Comd S. pōict exhibic' quedā  
 Summonicio, Anglice Summons, in Script'  
 sub manu & sigill' pōict J. R. und Justic'  
 dñe Dñe Regine ad Pacem in & pro Comd  
 S. pōict ut pferetur conserband assign' tunc  
 existend geren' dat' eidem die & anno per  
 quendam R. R. delibac' fuit pōict S. B.  
 ad sectam cuius quidem S. B. idem J. ad-  
 uunc stetit onerat' in custod & Imprisonament',  
 perinde appunctuan' eund S. B. ad compa-  
 rend coram Justic' dñe Dñe Regine ad Pa-  
 cem in & pro Comd S. pōict conserband as-  
 sign' ad tunc pro' General' Quaterial' Ses-  
 sion' Pacis tenend pro Comd S. pōict p ad-  
 ornament' die Veneris 13 die Octobr' aduunc  
 nstan' ad ostend causam quare ipse idem J.  
 non exonerat' foret iuxta formam & effectum  
 Statut' pōict & idem J. ulterius in facto  
 die quod ipse idem J. postea scilicet 21 die  
 Octobr' Anno Dñi 1704. supradict' ad tunc  
 pr' General' quaterial' Session' pacis dñe  
 Dñe Regine tunc tenu' p adornament' pro  
 Comd S. pōict apud R. sup T. in Comd  
 S. pōict coram J. P. Ar' & J. L. Ar' & al'  
 ioclis suis tunc Justic' ad Pacem dñe Dñe  
 Regine in & p Com' S. pōict conserband  
 assign' p pōict J. F. custod pprione de Com-  
 mutatoz' de Burgo de S. pōict ut pferetur  
 pstant' virumte cuiusdam Warrant' sub mas  
 (Part IV.) Z nu

nu & sigill' p'dict' J. R. tunc & ibm und  
 Justic' dicte Dñe Regine ad Pacem in &  
 pro Com' S. p'dict' ut p'fertur conserband' als  
 sign' eidem J. F. direct' & tunc prius delis  
 bat' duct' fuit unacum copia Caus' commis  
 sion' sue, Idempz J. adtunc & ibm secundu  
 formam & effectum Statut' p'dict' super Sacro  
 Scto Dei Evangel' p'stitit Sacram suum cora  
 porat' & solempnit' p'stebatur & declarabit cora  
 ram Deo omnipotent in form' sequent'  
 videlt' quod ipse p'dict' J. tunc non habuit  
 aliquem statum real' vel personal' in posses  
 sion' reversion' vel remanere vel in Fiduc' de  
 valor' 10 l. in toto vel sufficiend' ad solvendi  
 deb' vel dampn' p' quibus ipse tunc imp'iso  
 nat' fuit Et quod ipse directe vel indirecte non  
 vendidit' dimissit' vel alit' conventas' disposuiss'  
 vel in fiduc' posuiss', Anglice intrusted, totam  
 vel aliqua' part' Stat' sui p'inde ad idem  
 securand' ad recipiend' vel expectand' aliquod p'  
 ficuum vel advantag' p'inde vel ad defrau  
 dand' & decipiend' aliquem creditor' vel cre  
 ditor' quoscunqz ouibus ipse indebitat' fuit, An  
 gllice stood indebted. Ac ad tunc & ibm  
 sup' Sacram suum coram eisdem Justic' de  
 claravit quod ipse idem J. non huit aliquod  
 effect' ei spectand' Adque null' debum ve  
 deba fuer' ei tunc debet' Et idem J. ulte  
 rius in facto die quod ipse R. R. ad p'dict'  
 General' Quarterial' Session' pacis tent' &  
 p'ud R. sup' T. in & p' Com' S. p'dict' 2  
 die Oct' Anno Dñi 1704. supradict' coram  
 p'fat' J. D. & J. L. & al' Sociis suis Ju  
 stic' ad Pacem dicte Dñe Regine in & p'  
 Com' S. conserband' assign' p'stitit Sacram  
 suum



um corporale quod ipse p̄dict R. R. defers  
 iis p̄dict S. B. Creditor' ipsius J. sup̄ius  
 ominat' cum Copia sup̄ recitat' Sum̄monicoñ,  
 Anglice Order, juxta formam & effectum Sta-  
 t' p̄dict, Quodq; p̄dict S. B. ad Sessionē  
 non comperuit ad ostendendū causam jurs  
 Sum̄monicoñ p̄dict Quare p̄dict J. jux-  
 formā Act' p̄dict' non exonerat foret ab  
 imprisonment' suo p̄dict' Ac sup̄inde ad ist'  
 Quarterial' Sessionē Pacis tent' apud  
 sup̄ T. in & p̄ Com' S. p̄dict p̄dicto 21  
 die Dec' Anno Dñi 1704. sup̄radicti coram  
 p̄dict J. M. & J. L. & al'. Sociis suis Justis  
 ad Pacem dicte Dñe Regine in & pro  
 Com' S. p̄dict conservandū assignū ipse idem  
 D. debito modo intravit seipsum, Anglice  
 ed himself, Soldarium in Servic' dicte Dñe  
 Regine sub conduct', Anglice command, Capt-  
 W. M. in Legione, Anglice Regiment,  
 Monelli H. juxta formam & effectum Sta-  
 t' p̄dict eodem Capitā W. M. adunc  
 p̄dicte authorizat' existendū sub signo Regal'  
 annual' dñe Dñe Regine nunc intrandū ip-  
 in J. Soldarium in servic' dicte Dñe Re-  
 gine idemq; J. Soldar' in Servic' dñe Dñe  
 Regine adhuc continuat & est videt' apud  
 Roch' Sci C. Dacorum in Com' Midd'  
 idem J. ulterius in facto die quod ipse  
 in J. postea scit' ad ist' eand' General'  
 Quarterial' Sessionē Pacis tent' p̄adformament'  
 ad R. sup̄ T. p̄dict in & pro Com' S.  
 p̄dict p̄dicto 21 die Dec' Anno Dñi 1704.  
 sup̄radicti coram p̄dict J. M. & J. L. & al'  
 Sociis suis Justis dñe Dñe Regine ad Pa-  
 in & pro Com' S. p̄dict conservandū  
 assignū



assign' debito modo relaxat' & exonerat' fui  
 ab imprisonament' suo p'dict' juxta formam  
 Statut' p'dict' in hujusmodi Casu inde ut p'  
 fertur edit' & p'bis' Et hoc parat' est verif  
 care Unde pet' judic' si p'dict' A. executio  
 suam vers' eum in hac parte p'terquam su  
 terras tenement' hereditament' & bond & c  
 tall' ipsius A. (Apparat', Anglice wearing A  
 parel, lectur' & necessar' Instrument' p' Ar  
 lua non exceden' 10 l. in valore tantummo  
 except') levand' & exequend' habere debeat, &  
 Et idem J. p'fert hic in Cur' quandam D  
 plication' de exonerat' & relaxat' sua i  
 cundum formam & effectum Aci' p'dict' si  
 manibus & sigil' p'dict' J. M. & J. L. cu  
 duor' Justic' ad Pacem d'ce D'ne Regine  
 & p' Com' S. p'dict' conservand' assignid' q  
 quidem Duplicat' sequitur in hec ver  
 A. Surr. ff. To John Fyldes, Keeper of  
 Prison of the Compter for the Borough  
 Southwark in the said County, Whereas *Je  
 miah Delavall* upon the Eighth Day of *2  
 vember* in the Year of our Lord 1703. be  
 actually a Prisoner in the Prison of the Com  
 ter aforesaid under your Custody for Debt  
 Damages, &c. (and so sets forth the Du  
 cate *in hac verba* to the End) Given  
 der our Hands and Seals in the said Ge  
 ral Quarter-Sessions of the Peace, held  
 Adjournment at *Kingston upon Thames*,  
 One and Twentieth Day of *October*, A  
 Dom' 1704. and in the Third Year of  
 Regn of our Sovereign Lady *Anne*, by  
 Grace of God of *England Scotland, Fr.*

and Ireland, Queen, Defender of the Faith,  
 &c.

John Mitchell,

John Lade,

Ex per Edwardum Clorbell  
 Cl. Pacis Com. prædict.

W. Hall.

Et p̄dict A. ex quo p̄dict J. Actionem ip̄s Repl. &  
 us A. p̄dict sup̄ius non dedic̄ nec quā ip̄s Demur̄.  
 e debet p̄fat A. p̄dict 200 l. in forma qua  
 adem A. sup̄ius ver̄ eum narrabit per  
 adie & debum suum p̄dict unacum damp-  
 nis suis occ̄one detentiōi Debi ill' sibi ad-  
 iudicari, Et eadem A. pro meliori & citiori  
 executione Debi sui p̄dict unacum dampnis  
 suis occ̄one p̄dict sibi fiend & adjudicand di-  
 cit quod p̄litum p̄dict p̄ p̄dict J. sup̄ius p̄li-  
 at' materiaq; in eodem content' minus suffi-  
 cient' in Lege existunt ad ipsam A. ab ali-  
 qua Executione quacunque in hac parte ver̄  
 p̄dict J. vel de terris tētis hereditament'  
 bon' & catallis suis levand vel ver̄ p̄son' e-  
 usdem J. exequend utrum eidem A. melius  
 viderit expediri habend repellend seu retardand  
 Ad quod quidem p̄litum ipsa necesse non  
 habet nec p̄ Legem terre tenetur aliquo mo-  
 do respondere Et hoc parat' est verificare Un-  
 de p̄ defectu sufficient' Placiti p̄dict J. in hac  
 parte per' etiam eadem A. iudic' de aliqua exe-  
 cutione quacunque Debi sui p̄dict unacum  
 dampnis occ̄one detentiōi Debi ill' ver̄ p̄-  
 fat J. vel de terris tētis hereditament' bon' &  
 Z 3 catallē

catall suis levand vel vers' pson ejus ere-  
quend utrum eidem A. melius viderit expe-  
diri sibi fiend & adjudicand, &c.

R. Agar.

Et pdict J. dic' quod Plitum pda' J.  
modo & forma pdict superius pstat' bon' &  
sufficiend in Lege exist' ad ipsam A. ab ere-  
cutione sua pdict inde vers' pson ipsius J.  
Hend repellend quod quidem Plitum mate-  
riamq; in eodem content' idem J. parat' est  
verificare & pbare pnt Cur', &c. Et quia p-  
dict A. ad Plitum ill' non respond' nec ill'  
hucusque aliqualit' dedic' idem J. ut prius per  
judic' & pdict' A. execution' suam inde vers'  
eum in hac parte pterquam sup terras ten-  
ta hereditament' & bon' & catall ipsius J.  
(Apparat', Anglice wearing Apparel, lectur' &  
necessar' Instrument' p Arte sua non exceden'  
10 l. in valore tantummodo excepti') levand  
& erequend habere debeat, &c. Sed quia Cur',  
&c.

See *Ley. Ent.* 65. Debt upon a Bond da-  
ted 5 *Maii*, 31 *Car.* 2. Defendant confesses  
the Action *quoad terras tenementa & bona*  
& *catalla*, (wearing Apparel, &c. excepted)  
but pleads the Statute 30 *Car.* 2. for Relief of  
Poor Prisoners, whereby it was Enacted, That  
all Persons in Prison the 29th of *May*, 30 *Car.* 2.  
for Debt, Damages, Account, Trespas upon  
the Case, &c. and had taken the Oaths in  
the



the Act mentioned, should be discharged thereof *secundum priorem Act' inde fact'*, and should be discharged of their Imprisonment, and all Debts, &c. contracted before their Discharge, giving Notice to their Creditors according to the Statute: And that he was in Prison the said 29th of *May*, and sued out a Certificate, and gave Notice according to the Statute, and was discharged the 18th of *October*, 31 *Car. 2.* To which Plea the Plaintiff demurred, and upon Argument of the Demurrer 35 & 36 *Car. 2.* it was objected.

1. That such a Debt was not within the Statute, for that it was not a Debt at the Time of the Statute 30 *Car. 2.* but after, *scilicet*, 5 *May*, 31 *Car. 2.* *Sed non allocatur*, for it was a Debt before the Discharge, and the Statute discharged him of all Debts, &c. contracted before the Discharge.

2. That the Plea did not shew for what he was imprisoned; and it might be for a Fine to the King, or some other Thing to which the Statute did not extend; for the Statute was not General to discharge out of Prison for all Matters, but for the Particulars herein mentioned; and it was said, That he was not in Prison at all, but had fraudulently obtained the Certificate.

The Court held the Exception as to the Matter for which he was in Prison most material; but they affirming that he was in Prison the said 29th of *May*, and for Debt only; the Court gave him a Day to satisfy them concerning it, and they would permit him to amend his Plea. The like Matter

## Bar al Debt sur Bill.

was argued in *Trinity*, 36 int' *Houghton* and *Shalcrofts*. See 3 *Lev. Rep.* 151, 152.

See *Methodus Novissima* 236. where the Defendant pleads at large several Acts of Parliament in Discharge of Poor Prisoners for Debt in one and the same Bar, as 22 *Car. 2.* and 30th of the said King, also the 2d of *William* and *Mary*, and concludes with bringing a Duplicate into Court, as follows.

*Et idem W. T. profert hic in Cur' quandam Duplicationem suam de exoneratione & relaxatione sua secundum formam & effectum Act' Parl' predict' sub manibus & sigillis predict' J. M. & W. J. tunc Justic' Pacis dicti Domini Regis & nuper Regine in & pro Com' Midd' predict' conservand' assign', &c.*

Ed. Lutwyche.

*Note*, That in *Clift's* Precedents 156. there is a Bar pleaded briefly by a Prisoner, and the Plaintiff acknowledges the Matter pleaded, and prays Judgment according to the Statute, and has it. The Manner is as follows.

**E** p'dict' J. M. p J. J. Attozn' suum ven' & defend vim & injur' quando, &c. Et dic' quod ipse non potest dedicere Accusationem ipsius J. M. p'dict' nec quin scriptum p'dict' sit factum ipsius J. M. nec quin ipse debet eidem J. M. p'dict' 50 l. in forma qua  
idem

idem J. W. supius vers' eum narrabit, Sed  
 p̄dict J. W. ulterius dic' quod p̄dict J. W.  
 executionem de deho p̄dict seu de aliquibus  
 dampnis occōne detentiōn' debi ill' sibi adju-  
 dicand' sup' psonam ipsius J. W. vel de ejus  
 Apparatu, Anglice wearing Apparel, supellectil',  
 Anglice Furniture, p' ejus domo manōnal' dic'  
 supellectil' non excedend' 10 l. in valore seu  
 de necessariis Instrumentis, Anglice Tools, p'  
 ejus manufactura, Anglice Trade, & occupatiō-  
 ne, habere non debet quia ipse idem J. W.  
 dic' quod ipse 25 die Dec' Anno Dñi 1695.  
 fuit Prisonar' in Prisona Dñi Regis cōit' vo-  
 cat' the King's Bench Prison in Com' Surr'  
 in custodiā C. T. ad tunc Mar' Maresc' Dñi  
 Regis nunc coram ipso Rege existend' custodi  
 Prisona p̄dict existend' eod' Prisona decerent' ad  
 Sect' separat' psonarum Creditorum suorum  
 p' diversis debis eis ab ipso J. W. de-  
 bit' Quodque ipse idem J. W. existend' pau-  
 per & ad solvend' Creditoribus suis deba  
 sua ab ipso J. W. eis debita oīo inhabilis pos-  
 tea scit' in vel circa 16 diem Maii Anno  
 Dñi 1696. apud C. p̄dict' relevamen in ea  
 parte juxta formam diversorum Statutorum  
 p' relevamine & exoneracone pauperum & af-  
 flic' Prisonar' p' deho nuper edit' & p̄bis' p̄-  
 tit, & inde p̄dict J. W. cui ipse p̄dict 50 l.  
 in forma p̄dict' ad tunc debuit ad tunc & ibi  
 debito modo & secundum formam Statut'  
 p̄dict' noticiam dedit Et supinde p̄dict J. W.  
 postea scit' 10 die Aug' Anno Dñi 1696.  
 supradict' apud C. p̄dict' debito modo & se-  
 cundū formam Statut' ill' cō J. W. ill'  
 mīd' contradicend' e Prisona p̄dict' exonerat' &  
 relaxat' fuit Et hoc parat' est verificare Un-  
 de



Judic'.

de pet' judic' si p'dict J. W. executionem de  
 debito & dampnis p'dict sup psonam ipsius J.  
 W. vel de Apparatu supellectil' seu necessar'  
 Instrumentis p'dict' habere debeat, &c. Et  
 quia p'dict J. W. materias p'dict' p ipsum  
 J. W. in forma p'dict' supius allegat' non des-  
 dit sed ill' fore veras concedit pet' judicium  
 & debitum suum p'dict' unatum dampnis suis  
 occasione detentionis debiti ill' sup terras tenta  
 bona & catalla ipsius J. W. (esius Apparatus,  
 Anglice wearing Apparel, & Supellectil', An-  
 glice Furniture, p esus domo manconal' dict'  
 Supellectil' non excedent 10 l. in valore ac  
 necessar' Instrumen', Anglice Tools, p esus  
 manufactur', Anglice Trade, & Occupatione  
 tantummodo except') sed non sup psonam ip-  
 sius J. W. juxta formam Statuti p'dict' exeq-  
 uend' & levand' sibi adjudicari, &c. — Ideo  
 cons' est quod p'dict J. W. recuperet veras  
 p'dict J. W. debitum suum p'dict & dampna  
 sua occasione detentionis debiti ill' ad 50 s. eidem  
 J. W. ex assensu suo p Cur' hic adjudicat'  
 sup terras tenta bona & catalla ipsius J. W.  
 (esius Apparatu, Anglice wearing Apparel, &  
 Supellectil', Anglice Furniture, pro esus do-  
 mo manconal' dict' Supellectil' non excedent  
 10 l. in valore ac necessar' Instrument', An-  
 glice Tools, pro esus Manufactur', Anglice  
 Trade, & Occupationis tantummodo except') sed  
 non sup personam ejusdem J. W. juxta formam  
 Statuti p'dict' exequend' & levand' Et p'dict J.  
 W. in mia.

Bar al Bill per Agreement quod Def. intraret Demur.  
in Recogn', &c.

**N.** **E** poict J. C. p J. B. Actorū suum  
ven & defend vim & insur quando,  
&c. Et dic quod poict J. L. Actorū suam pō  
vers' eum habere non debet quia dic quod  
iple post confectonem bille poict & ante diem  
impetraconis hris Originalis poict J. L. scit  
8 die M. Anno regni Dñi Regis nunc Angl<sup>o</sup>  
8 apud W. poict insimul computasset cum p-  
fat J. L. tam de poict 80 l. in billa poict  
menc' quam de diversis al' denar' sumis vi-  
det de 32 l. pfat J. L. p eund J. C. ad-  
tunc debet', & sup Compō illo idem J. C. in-  
vent' fuisset pfat J. L. tam pro poict 80 l.  
in billa poict mentionat' quam pro poict al'  
denar' summis indebitat' in summa 112 l. Et  
idem J. C. ulterius dic' quod ipso eodem J.  
C. pfat J. L. in poict 112 l. sic ut pferur  
indebitat' existend' eisdem die & Anno apud  
W. poict concordat' & agreeat' fuit inc' eun-  
dem J. C. & pfat J. L. quod idem J. C.  
solveret pfat J. L. easdem 112 l. ad vel  
infra tunc domum manconal' poict J. L. in  
W. poict super 29 diem Sept' tunc ppor' ses-  
quend' Et quod idem J. C. tam in exonatio-  
ne & satisfactiōe Bill' Obl' poict quam pro  
meliori securitate solutionis poict 112 l. ad  
diem & locum poict ult' mentionat' se recog-  
nosceret debere pfat J. L. p Recognitionem  
in



in natura Statuti Stapule 200 l. legalis monete Anglie solvend' in Festo Pasche tunc prox' sequend' post p'dict' 8 diem Mar. Anno 8 supradicto Ac idem J. C. in facto die q'd ipse postea scit' 8 die Martii Anno 8 supradicto apud W. p'dict' p' quendam Recognitionem in natura Statut' Stapul' coram S. S. Mil' adunc Major' Civit' L. & H. M. Mil' adunc Recordator' Civit' p'dict' secund' formam Statut' in hujusmodi Casu edic' & probis' adunc & ibm recognit' recognovisset se debere p'fat' J. L. p'dict' 200 l. solvend' eidem J. in p'dict' Fest' Pasce quam quidem Recognition' p'dict' 200 l. in forma p'dict' recognit' p'dict' J. L. adunc & ibm tam in exoneratione & satisfactione p'dict' Bill' Obl' quam pro meliori securitate solution' dictarum 112 l. sup' p'dict' 29 diem Sept' & ad domum p'dict' solvend' de eodem J. C. cepit & acceptabit Et idem J. C. ulterius in facto die quod ipse postea scit' eodem 29 die Sept' prox' sequend' post p'dict' 8 diem Martii Anno 8. supradicto solvit p'fat' J. eadem 112 l. in p'dict' domo man'onal' p'dict' J. L. videlt' apud W. p'dict' secundum formam & effectum Agreement' & concord' p'dict' Et hoc parat' est verificare Unde pet' Judic' & p'dict' J. L. action' suam p'dict' inde contra p'dict' Recognition' p'dict' Statut' Stapul' pro securitat' p'dict' Debi 112 l. p' ipsum J. C. eidem J. L. sic ut prefertur capi' & recognit' & p'eund' J. L. de eod' J. C. in forma p'dict' accepi' & habet' vers' eum Here debeat, &c.

Et p'dict' J. L. die quod p'dict' Plitum p'dict' J. C. superius in barram Action' ipsius



ipſius J. L. plicat' ac materia in eodem plico content' minus ſufficient in Lege exiſt' ad ipſum J. L. ab Accone ſua pdict' verſ' pſat J. C. henc pcludend' p eo videlic' quod villa pdict' eſt villa ſine Conditione & non poteſt evacuari p Agreementum uifi ſit per factum quodque ipſe ad plicum illud p pdict' J. C. in forma pdict' plicat' necelle non habet nec p Legem terre tenetur reſpondere Et hoc parat' eſt ſificare Unde p defectu ſufficient plicu pdict' J. C. in hac parte idem J. L. pet' judic' & debitum ſuum pdict' unacum dampnis occaſione Detention' debi ill' ſibi adjudicari, &c. Def. jung' in Noxae Et per Opinion del Court le Plea eſt male. Vide Winch. Ent. 170, 171.

Vide Bar per Acceptance del auters Chofes.

¶ Barr al' Bill, Quod Def. ante Feſtum Feoffabit quer' de pſato p quod quer' exiſtimabit pſatum fuiſſe de bono titulo. Vide Placit. General. & Special. 324.

¶ Conditions pſond' ſecundum tenorem bille cum deliberacone Alverion' cum Incremento vocat' the Stock, &c. Repl' non delibabit le Stock cum Conditione & Crit. Placit' Gen. & Spec. 282.

Bar al Bill in Debt per Release de tous Actions.

¶ **A** Cō non, &c. Quia die quod post  
confection' scripti pōict scitē (tali die  
& anno) pōict quer' p quendam billam suam  
Acquittance quam idem def. sigillo ipsius quer'  
signat' hic in Cur' pferat ejus dat' est eisdem  
die & anno acquietabit exonerabit ipsum  
Def. p noēn, &c. de oībus Actionibus Quere-  
lis demand' debis compui' & litibus, An-  
glice Debates, a Principio Mundi usque ad dis-  
em dat' ejusdem ville Et hoc, &c. Unde, &c.

Et pōict Quer' die quod ipse pcludi non,  
Quia die quod pōict billa Acquietanc' non,  
est factum suum Et hoc per' quod inquiras-  
tur p p'iam, &c. See Bro. Rediviv. 186.

Al Count sur Bill pro 10 l. Bar per Acquie-  
tanc' mentionan' quod billa non potuit in-  
veniri.

¶ **E** pōict A. quando, &c. Et die quod  
Acto non Quia die quod pōict S.  
post confectionē ville pōict scitē 13 die Non.  
Anno dicit Dñi Regis nunc tertio apud W.  
pōict p noēn, &c. quoddam scriptū suum  
sigillo pōict S. signat', quod pōict A. hic in  
Cur' pferat ejus dat' est eisdem die & Anno  
cognovisset se habuisse & recepisse die confectionis  
scripti pōict de p'fat A. in vita sua p  
noēn

noën, &c. sumam Decem<sup>us</sup> Librarum legalis  
monete Angl<sup>e</sup> solvend<sup>um</sup> eidem F. ad Festum  
S<sup>an</sup>c<sup>t</sup>i Mich<sup>alis</sup> Archi tunc uli<sup>us</sup> p<sup>re</sup>terit<sup>us</sup> ante dat<sup>um</sup>  
es<sup>us</sup>dam scripti put<sup>ant</sup> p<sup>er</sup> quandam billam inde  
fact<sup>am</sup> apparuit que quidem billa adtunc non  
fuit invent<sup>a</sup> ad cancelland<sup>um</sup> & de qua quidem  
summa 10 l. & c<sup>on</sup>s<sup>u</sup>ssibet parcel<sup>is</sup> inde in dicta  
billa menconat<sup>ur</sup> p<sup>re</sup>dict<sup>us</sup> F. cognovisset se bene  
& vere conteni<sup>um</sup> satisfact<sup>um</sup> & solut<sup>um</sup> esse & clare  
acquietabit & exonerabit p<sup>re</sup>dict<sup>us</sup> A. C<sup>on</sup>tra  
Adm<sup>in</sup> & Als<sup>us</sup> suos de eadem & qualibet par-  
te & parcell<sup>is</sup> inde imp<sup>er</sup>petuum p<sup>er</sup> idem scriptu<sup>m</sup>  
Et eadem A. dic<sup>it</sup> quod billa p<sup>re</sup>dict<sup>us</sup> in script<sup>is</sup>  
Acquietanc<sup>ie</sup> spec<sup>ies</sup> est eadem billa in Part<sup>e</sup>  
p<sup>re</sup>dict<sup>us</sup> menconat<sup>ur</sup> & non alia neque diver-  
sa Et hoc parat<sup>ur</sup> est verificare Unde pet<sup>itur</sup>  
judic<sup>ium</sup> si p<sup>re</sup>dict<sup>us</sup> S. Action<sup>em</sup> suam p<sup>ro</sup>duc<sup>it</sup> contra  
scriptum Acquietanc<sup>ie</sup> suam pp<sup>ro</sup>vers<sup>us</sup> eum  
here debeat, &c.

Et p<sup>re</sup>dict<sup>us</sup> S. p<sup>ro</sup>cludi non, Quia dic<sup>it</sup> quod p<sup>ro</sup>-  
scriptum Acquietanc<sup>ie</sup> p<sup>re</sup>dict<sup>us</sup> non est factum su-  
um Et hoc pet<sup>itur</sup> quod inquiratur p<sup>er</sup> P<sup>ro</sup>curat<sup>orem</sup>,  
&c. Vide Bro. Red. 201.

Vide postea, Bar per Release ou Acquit-  
tance.



## Bar in Debt sur Obl'.

Bar per Regalem protectionem sub magnō sigillo Anglie fact' al' Def. & al' pro Anno & die.

¶ **E**T p̄dict B. p̄ T. S. Attoꝝ suū ven̄ & dic̄ quod p̄dict T. J. ad breve suū p̄dict respondere non debet, Quia dic̄ quod Dominus Rex nunc p̄ Iras suas Patentes sub magno sigillo Anglie sigillat' gerend' dat' apud Westm̄ in Com̄ Widd 19 die Martii Anno Regni sui quarto dilectis & fidel' ejus L. Dñs C. Dñs Custos Pagani sigilli sui Angl' & Dñs Thesaurar' Angl' & Cancellar' Subthesaurar' & Baron' Scaccar' sui & Capital' Justic' suo de Banco & omnibus al' Judicibus & Justic' suis tunc & p̄ tempore existent' & omnibus & singulis Pastoz' Vic' Ballivis Constabular' Serbient' Sattellicibus (Angl' Yeoman,) & aliis Officiar' & Ministris & al' personis quibuscunq; direct' quas idem B. sub magno sigillo Anglie sigillat' hic in Cur' p̄fert recitando p̄ easdem Literas paten̄ quod cum J. W. Bar per humilē suam Petition' monstrasset eidem Dñō Regi qd̄ B. m̄. Mil' & Bar pater ipsius Johis had died about twelve Months before, and had left him the said J. W. and divers' other his Friends very much engaged for him; and he being willing to give all possible

possible Satisfaction, as also to save harmless his Friends who stood Surety, which he could not otherwise do than by Sale of his Lands: Therefore he had prayed the King's Royal Protection for the Space of a Year. That the King had referred his Petition to his Privy Council, who being satisfied of the Truth of the Allegations, did think fit, that the Royal Protection should be allowed to him and the Sureties accordingly, &c. *Idem* Dom̄ Rex nunc premissa bene ponderans p̄ advisament' privat' Concilii sui p̄dict de p̄erogativa sua Regia quam idem Dom̄ Rex nunc noluit argui sive deduci in questionem de gr̄a sua speciali, &c. granted such a Protection for them, their Lands, Goods and Chattels, not to be any ways molested, arrested, attatched, distrained, &c. Pro aliquibus debitor' debent, Anglice Duty, sive Causa quacunque p̄dict B. M. defunct' vel p̄dict J. M. (Except' materiis sive Causis de p̄dictione Felonia & al' Criminal' Causis & Except' p̄lit' de Dote Unde nichil her', Quare Impedit, Assis de nova disseisina ultra p̄sentationem & Attinē') Et si, &c. tunc potest' dat Cancellario, &c. & eorū cuilibet super petitione, &c. ad supercedend' omnes tal' process, &c. absque aliquo ulteriore sive alio Warrant' p̄inde fiend' sive p̄sequend' al' quid visu earundem Literarū p̄aten' vel irrotulament' earundem aliquibus Lege Statut' consuetudine Usuagio p̄scriptione vel aliquibus procland' ante tunc per ipsum Dom̄ Regem vel p̄ aliquem p̄genitorum vel antecessorum suorum fact' in contrariū in aliquo non ob-

(Part IV.)                      A a                      stat

Ita ut p eadē Literas Patēd plenius  
 apparet Et idem B. dic' quod ipse ante con-  
 fectionem Scripti' p'dict' scilicet p'dict' 17 die  
 Febr' Anno Regni dicti Domi Regis nunc  
 primo apud L. in Paroch & Ward p'dict' ut  
 pleg' & Fidejussor, Anglice Surety, & p alio  
 & mero deho p'dict' B. simulcum eod B. p  
 Scripti' Obl' p'dict' hic in Cur' plac' debent  
 obligat' p'sat' T. J. in p'dict' 200 l. cum Con-  
 ditione supinde p solutione p'dict' 102. l. sup  
 19 diem Martii tunc p' sequend Et hoc pa-  
 rat' est verificare Unde pet' judicium & quod  
 breve Domini Regis de protectione patēd  
 eidem B. und Fidejussor' & pleg' p'dict' B. &  
 p alio & mero deho p'dict' B. p Scriptum  
 p'dict' Obligat' existend eidem B. allocet', &c.  
 Et quod idem B. durand p'dicto Termino u-  
 nius Anni in eisdem Literis Patēd' menc  
 eat inde sine die, &c. Vide 2 Brown's Ent. 106,  
 &c.

Aliter pro Mercator' & al' qui dampn' &  
 detriment' per naufrag', &c. sustinuer'  
 Et Demur' inde secund' Thomp. Ent.  
 214.

**E**T p'dict' R. M. per A. H. Attorn  
 suū veni & profert hic in Cur' dēe  
 Dñe Regine Literas ipsius Dñe Regine de  
 p'tectione Patēd sub magno sigillo ipsius  
 Dñe Regine Anglie sigillat' gerend dat' as-  
 pud Westm 27 die Aprilis Anno Regni sui  
 24 Quarta tenor sequit' in; hec verba, Eliz.  
 Dei



Dei Gra, &c. Proviso semper quod durand tempore hujus protectionis & salve tuitionis nre pstat R. M. H. & S. se honeste gerant erga nos Regnum & Subditos nros in cuius rei Testimonium has Literas nras fieri fecimus paten p unum Annum integrum post dat presentium duratur T. meipsa apud Westm 27 die Aprilis Anno Regni nostri 24. Et idem R. M. per quod Liter' pdict ei allocent', Et quod loquela pdict remaneat sine die, &c.

Et pdict M. dic quod Liter' pdict non sunt alocabiles seu valide in Lege ad Loquelam pdict sine die ponend Et hoc parat' est verificare Unde p defectu respons' pdict R. in hac parte idem M. per' judic Et qd Liter' ill non allocent' sed p nullo peni' teneant' Et quod pdict R. ad breve & Rarc suam pdict respondeat, &c.

Et idem R. ex quo Liter' pdict sufficient' & valide in Lege existunt ad Loquelam pdict sine die ponend, Ut prius per' quod Liter' pdict allocent' Et quod Loquela pdict' remaneat sine die, &c. Et quia Justic hic se advisare volunt de & sup pmissis priusqnd Judic inde reddant Dies dat' est partibus pdict hic usque in Octab Scte Trind de judicio suo audiend eo quod idem Justic hic ins de nondum, &c.

Aliter.

Aliter secund' Clerk's Assist 318. Pro illis in obsequium Regine profectur'. Et Loquela reman' sine die.

ff. **J.** C. de, &c. sum' fuit ad respond' R. P. de placito quod reddat ei 20 Marcas quas ei debet & injuste detinet, &c. Et unde, &c. per Obligat', &c. — Et p'dict' J. p' ff. P. Attoz' suum ven' Et protulit hic in Cur' L'ras Dñe Rñe de protectione paten' quarum tenor sequit' in hec verba Elizabetha Dei Gra, &c. In cuius rei Testimonium has Literas n'ras fieri fecim' paten' p' unum Ann' integrum duratur' T. meip'sa apud S. 26 die Octob' Anno Regni nostri 18 Et pet' quod L'iter' p'dict' allocent' Et allacant', Ideo Loquela p'dict' remaneat sine die, &c.

Aliter secund' Hansard 127. & Protectio allocatur.

ff. **E** T p'dict' R. B. in ppz' p'sona sua ven' & defend' vim & insur' quando, &c. Et protulit hic in Cur' Literas Dñi Regis paten' de protectione que sequunt' in hec verba Henr', &c. Et sup' hoc p'dict' R. B. pet' quod L'iter' Paten' Dñi Regis eidem R. allocent'. Et super hoc vis' & per Cur' Dñi Regis hic plenius intellectis p'ails' Cong.

Cons' est quod Liter' Dñi Regis paten' p'dict' p'fat' B. allocent', &c. Et quod ipse eat sine die, &c.

Aliter. Idem Hans. 126.

¶ **A**d quem diem vendam p'd' Quer' quam p'dict' Def. p' Attoz'd suos p'dict' Et sup' hoc p'dict' Def. profert hic in Cur' Literas paten' Dñi Regis quarum dat' est apud C. tali die & Anno Quarum tenor sequit' in hec verba ff. Henr' octavus, &c. omnibus ad quos Liter' n're p'ven' saltem Sciatis qd' suscepimus in protectionem & defens' n'ras, &c. Ideo Loquela p'dict' reman' sine die Coquod p'dict' Def. Obsequio dicti Dñi Regis in Ser' vicio p'dict' R. W. p'fecur' est ibidemque in eodem Obsequio moratur a p'dict' die, &c. p' Wñd' Ann' tunc p'p' sequen' duratur' m'ie balitur' ff. &c.

Intrac' Literar' Paten' protectionis & allocat' inde.

¶ **P**recept' est Wic' quod caperet J. R. &c. Et salvo, &c. ita quod haberet corpus ejus coram Dño Reg' apud Westm' die, &c. ad respond', &c. Ad quem diem coram Dño Rege apud Westmon' ven' p'dict' R. W. in p'p' p'sona sua et Wic' retorn' quod virtute brevis sibi inde direct' cepit p'dict' J. R. ejus corpus coram Dño Rege ad diem & locum p'dict' parat' habuit prout p' idem p'cept' mandat' fuit Qui quidem J. R. p' ipsum Wic'



sic ad Barr in propi' psona sua duct' die qđ  
 pōict R. R. eund J. R. ocōne pmissorum  
 implitari non debet Quia die quod Dom'  
 Rex nunc als scit 16 die Maii nunc ult'  
 pterit' suscepit ipsum J. R. in protectionem  
 & defensionē suas Quaz quidem Literat' Dñi  
 Regis de protectione tenor sequit' in hec ver-  
 ba Henr', &c. Quaz quidem Literaz Dom'  
 Regis ptertu idem J. per' quod ipse ab om-  
 nibus placit' & querel' (Excepi' placit' & Quer-  
 rel' ut pōict' excepi') dimittat' Et quod ees-  
 dem Liter' Dñi Regis de protectione eidem  
 J. R. iuxta vim formam & effectum earun-  
 dem Literaz allocent', &c. Quibus Literis  
 Dñi Regis de protectione p Cur' Dñi Re-  
 gis hic visis & plenius intellectis maturaque  
 deliberatione inde habit' Cons' est quod Li-  
 ter' Regis pōict' de protectiōe pstat J. R.  
 sint allocat' Et quod idem J. R. eat inde  
 sine die, &c. Vide Hansl. Ent. 126.

### Disallocac' Protectionis.

¶ **S**uper quo visis & intellectis p Cur' Do-  
 mine Regiū hic Liter' pōict' videt' eis-  
 dem Cur' Domini' Reg' hic quod breve il-  
 lud non allocabil' sed invalid' ad loquelam  
 pōict' sine die ponendū exist'. Ideo Jur' pōict'  
 ulterius ponit' in respect' coram Dña Rāa  
 (usque tētem diem) nisi dilect' & fidel', &c. pro  
 defectu Jur', &c. Ideo Ric' Vab corā, &c.  
 Idem dies dat' est partibus pōict' ibidem, &c.  
 Idem. Hansl. 126.



gis Calic' & Marchiar' ibidem in partibus Piscardie moratur p unum annum duratur'.

Custos privati sigilli dicti Domini Regis mei p W. H. de H. Mil locum tenend Domini Regis General ville sue & Castri Calic' ac Marchiar' ibm.

Allocac' secund' *Raft.* 493. b

**P**ostea continuat' process' inter partes p'de p'dicto placito p Jur' p'oit' inde inc' eas in respec' hic usque ad hunc diem scilicet, &c. Et modo hic ad hunc diem veid tam p'dict' R. p Attorn' suum p'dict' quam R. J. ex parte p'dict' T. B. Et sup hoc Loquela p'dict' remand sine die Co quod idem T. in Obsequio Domi Regis in Comitiva Charl' Ami Consanguinei, &c. in Guerris Domini Regis in partibus transmarinis vel sup Mare pfecturus est Et habet inde Literas Dni Regis de protectione Patent' Quar' dat' est apud W. 6 die Jan', &c. valitur' quam diu idem T. in Gladis & Obsequiis Domini Regis Guerre sue p'dict' moratur, &c. juxta formam & effectum cusesdam Act' parliament' Domini Regis nunc apud Westm' quarto die Feb' Anno Regni sui tercio tent' edit', &c. Stat. 3 H. 8. cap. 4. expired. See more *Raft. Ent.* 494.

See *Raft. Ent.* 492, &c. where several Actions are brought for procuring Protections. Cur' Regis ac Legi & Cons' Regni Regis Anglie manifeste illuden, &c.



A *Certiorari* to know if he is or was in the King's Service, *Id.* 494. b.

¶ Protection at *Risi prius*. Et verdict prise al peril del Plain'. Repe' de Protection Et le verdict adjudge void, *ibidem*.

¶ Reattachment & Resummons sur Protection. Repe' *ibidem*.

¶ Un Protection fuit allow. Et mesme le Term' un innotescimus fuit m're issint que le Protection fuit repe'. Et in mesme le Term' fuit agard un Reattachment, &c. *Id.* 495. a.

¶ Retorn del Vie quod moratur in Com' A. Domino Regi in Cancellar' sua Certific quod E. infrascript' non est pfectus in Obsequium Domini Regis in Comitiva J. A. Domini de A. infrascript' versus partes transmarinas, imo moratur apud S. in Com' meo, propriis negotiis indies intendendo. *Id.* 495. b.

¶ Reson' apres Protection Repe' p Innotescimus quia non pfectus, &c. *Id.* 495. a.

By *Stat.* 25 E. 3. *Stat.* 5. 9. Notwithstanding the King's Protection of his Debtor, other Creditors may proceed to Judgment against him with a *cesset Executio* until the King's Debt be paid; and here, if the Creditors will undertake for the King's Debt, they shall have Execution against the Debtor, both for their own Debts, and likewise for so much as they have paid the King.

By

By 1 R. 2. 8. No Protection with the Clause of *Volumus* shall be allowed for Victuals, taken or bought upon the Voyage or Service whereof the Protection maketh Mention, neither yet in Pleas of Trespass, or Contracts made after the Date of the same Protection.

By Stat. 13 R. 2. 16. No Protection with the Clause of *Quia profecturus*, shall be allowed in any Plea whereof the Suit was commenced before the Date of such Protection, except in a Voyage where the King goeth in Person, or other Voyage Royal, or in the King's Messages; howbeit this Act will not infringe Protections with the Clause *quia moratur*, and if the Party protected tarry more than a convenient Time in the County without going to the Service, or return from the Service, the Chancellor having Notice thereof shall repeal his Protection.

Bar' in debito Quod Quer' non fuit in Regno Anglie die solutionis.

¶ **Q**uia dic' quod p'dict M. p'dict 19 die Decemb' p'r' post dat' script' p'dict in Condition p'dict' mencionat' non fuit infra Regnum Anglie nec infra quatuor Maria p' quod idem A. p'dict 50 l. & 15 s. eidem M. ad diem ill' secund' formam & effectum Condition ill' solvere non potuit Et hoc parat' est verificare Unde per' iudic' A p'dict M. Action' suam p'dict' vers' eum habere debeat, &c. Vide Clift's Ent. 146.

Debt

Debt upon Bond for Payment of Money, there being no Place named in the Obligation where it shall be paid. The Defendant pleads, The Plaintiff was beyond Sea at the Day of Payment, and saith not *uncore prist*. *Per Cur'* This is a good Cause of Demurrer. *Siderf. p. 30. Hill. 12 & 13 Car. 2. B. R. Hobson and Rudge.*

*Bar in Debt sur Oblig', per Payment, Conditions, performed, &c.*

Solvit ad diem al Oblig' de Payment, al unum diem.

**E**T modo ad hunc diem, &c. Et per' audit' Script' Oblig' p'dict Et ei legi', &c. per' etiam auditum Condition' esusdem Scripti Et ei legitur in hec verba, The Condition, &c. Quibus lectis & auditis idem C. dic' quod p'dict A. Actionem suam p'dict inde vers' eum habere seu manutenere non debet quia dic' quod ipse idem B. in & sup primum diem Hanc in Conditione p'dict supius spec solvit p'fat A. p'dict 20 l. in eadem Conditione supius menconat' quas ei ad eundem diem solvisse debuit secund formam & effectum dicte Condition' videlicet apud D. p'dict Et hoc parat' est verificare Unde per' iudicium si p'd A. Actionem suam p'dict vers' eum here seu manutenere debeat, &c.

Et p'dict A. dic' quod ipse p aliqua p p'd C. supius placitando allegat' ab Actione sua p'dict



pdict inde vers' eum habend' pcludi non debet Quia dic' quod pdict C. super pdict p'imum diem Mali supius menconat' non solvit p'fat A. pdict 20 l. in Condiçione pdict supius menconat' secundum formam & effectum Condiçion' pdict modo & forma put pdict C. supius placitando allegabit Et hoc pet' quod inquirat' p P'ziam Et pdict A. similiter Ideo ven' inde Jur', &c. Vide 1 Instruct. Cler. 215.

*Aliter, When payable at a certain Place.*

**E**T modo, &c. Et pet' auditum Scripti Oblig' pdict Et ei legit', &c. pet' etiam auditum Condiçion' ejusdem Scripti Et ei legit' in hec verba, The Condition, &c. Quibus lectis & auditis idem Def. dic' quod pdict quer' Actio' non quia dic' quod ipse idem Def. solvit p'fat' quer' pdict 14 l. in Condiçion' pdict superius mentionat' sup p'imum diem Provend' in eadem Condiçione spec' quas ei sup eundem diem solvisse debuit secundum formam & effectum Condiçion' Scripti Oblig' pdict videlicet apud tunc domum manconat' pdict' Quer' in Condiçion' pdict spec' situat' in Paroch' & Ward pdict Et hoc, &c. Unde, &c.

Precludi non quia dic' quod pdict Def. non solvit p'fat' Quer' dic' 14 l. in Condiçion' Scripti Oblig' pdict mentionat' secundum formam & effectum Condiçion' pdict modo & forma put pdict Defend' supius placitando allegabit

legabit Et hoc pet', &c. Ideo, &c. See after upon a Bond payable at the Defendant's House.

Vide Clerk's Assist' 82. Clerk's Man' 396. Bro. Vad. 212.

Solvit ad unū Festum, &c. Rast. Ent. 185. Rob. Ent. 200. Plit. Gen. 288. 326. 337. Bro. Vad. 223. Simile al Will Thomp. 433. in billa pōict' mentionē secundū formam & effectum bille pōict', &c. Clerk's Man. 250. Thomp. 435.

**N.** **Q**uod solvit ad duos dies—Quibus lectis & auditis idem R. dic' quod pōict' M. Actionē non quia dic' quod ipse solvit p'fat' M. pōict' 20 l. in pōict' 10 die M. & pōict' 20 l. in pōict' 20 diem F. quas eidem M. in eisdem diebus solvisse debuit secundū formam & effectum Indorsament' pōict' videlicet apud L. in Paroch & Ward pōict'. Et hoc, &c. Unde, &c.

Et pōict' M. dic' quod ipse p'cludi non, quia p'testando quod pōict' R. non solvit eidem M. pō 20 l. pōict' 20 die F. put idem R. superius allegavit p' placito dic' quod pōict' R. non solvit eidem M. pōict' 20 l. pōict' 10 die M. quas idem R. eodem 10 die M. solvisse debuit secundū formam & effectum Indorsament' pōict' put pōict' R. superius allegavit Et hoc pet' quod inquiret' p' W'riam Et pōict' R. similiter Ideo, &c. Vide Rast. Ent. 185, Simile ad Will. Clerk's Man. 255.

Aliter

Aliter ad separal' dies cum Repl' Rejunc' &  
Exit'.

**R.** **Q**uibus lectis & auditis, idem R. dic' quod p'dict' T. Actio non quia dic' quod ipse solvit p'fat' T. 7 l. 10 s. in forma subsequen' videlicet in Festo P. pr' post dat' Scripti p'dict' 50 s. & in Festo P. tunc pr' sequen' 50 s. & in Festo P. tunc pro' sequen' 50 s. secundum effectum Condi'ion p'dict' Et hoc, &c. Unde, &c.

Et p'dict' T. dic' quod ipse p'cludi non, quia p'testando quod p'dict' R. non solvit ei- dem T. aliquem denar' summam in aliquo Festo Festorum p'dict' in Conditione p'dict' spec' solvend' put' p'dict' R. sup'ius allegavit p' placito dic' quod p'dict' R. non solvit ei- dem T. 50 s. in p'dict' primo Fest' P. pr' post dat' Scripti p'dict' secundum formam & effec- tum Condi'ion p'dict' Et hoc parat' est verificare Unde per' iudic' & de huiusmodi p'dict' unacum dampnis suis occ'one deten'ion Debi illi sibi adjudicari, &c.

Et p'dict' R. dic' quod ipse solvit p'fat' T. p'dict' 50 s. in p'dict' primo Fest' P. pr' post dat' Scripti p'dict' secundum formam & effectum Condi'ion p'dict' put' ipse sup'ius allegavit Et de hoc p'vid' se super patriam Et p'dict' T. similiter Ideo p'cept' est Uic, &c. Vide Rast. Ent. 185. Et quere, if the Plaintiff ought not to have tendered Issue in his Replication.



Aliter al divers jours.

**Q**uia die quod ipse solvit p̄fat' *Q.*  
 p̄dict 4 l. in p̄dict Fess', &c. Et p̄  
 4 l. in p̄dict Fess' *A.* in Conditione p̄dict  
 spec' quas summas idem def. eidem Quer'  
 in Fess' ill' separatim solvisse debuit secundum  
 formam & effectum, &c. (ut supra) Idem  
 Rast. 185.

Aliter ad separal' dies secundum *Thomp.*  
*Ent. 434.*

**Q**uibus lectis & auditis (Actionem non) quia  
 die quod ipse idem *D.* solvit p̄fat'  
 Quer' p̄dict 22 l. in Conditione superius spec'  
 modo & forma sequen' videlicet super diem  
 sabti existen' sext' die Julii prox' sequen' post  
 dat' Script' Oblig' p̄dict 40 s. super diem  
 sabti tunc prox' sequen' at 40 s. Et sic pos  
 tea sup quemlibet die sabti in qualibet sep  
 timana tunc pr' & immediate sequen' alter  
 40 s. quousque p̄dict 22 l. fuit plenat' satis  
 fact' & solut' secundum formam & effectum  
 Conditione ill' Et hoc, &c. Unde, &c. —  
 Precludi non quia protest' non solvit p̄fat' *Replie'.*  
 quer' aliquas denar' sum' in Andors' p̄dict su  
 perius spec' secund' formam & effectum Andors'  
 ill' p' placito tamen idem quer' die quod  
 p̄dict Def. in & sup p̄dict diem sabti exis  
 sten'

Item 6 die Julii in Andors' p'dict' superius  
menc' non solvit' p'fat' quer' p'dict' 40s. in  
eodem Andors' supius similiter menc' secun-  
dum formam & effectum Andors' ill' Et hoc  
per' &c.

Aliter quod solvit omnes denar' summas in  
Indorsamento spec' Repl' Rejo. & Issue.

ff. **Q**uibus lectis & auditis idem J. die  
quod p'dict' M. Actionem non quia die  
quod ipse solvit p'fat' M. omnes & singulas  
Denar' summas in dicto Indorsament' spec'  
in Festis in eodem Indorsament' limitat' secun-  
dum formam & effectum Andors' ill' videlicet apud  
M. in Com' R. Et hoc, &c. Unde, &c.

Et p'dict' M. die quod ipse p'cludi non,  
quia p'restando quod p'dict' M. non solvit ei-  
dem M. aliquam denar' summam in Andor-  
sament' p'dict' supius spec' in aliquo Festo in  
eodem indorsament' limitat' put p'dict' J. su-  
pius allegavit p' placito die quod p'dict' J.  
non solvit eidem M. 20 s. in p'dict' Festo  
Par' Dom' quod fuit in Anno, &c. quos ei-  
dem M. in eod' Festo solville debuit secun-  
dum formam & effectum Indorsament' p'dict'  
put p'dict' J. supius allegavit Et hoc parat'  
est verificare Unde per' judic' & dictum suum  
p'dict' unacum dampnis, &c. ubi adjudicari  
&c.

Et p'dict' J. die quod ipse solvit p'fat' M.  
p'dict' 20 s. in p'dict' Festo Par' Domin'  
quod fuit in Anno, &c. quos eidem M. in

eodem Festo solvisse debuit secundum formam  
& effectum Indorsament' p'dict' put ipse supis  
us allegavit Et de hoc ponit se sup P'iam Et  
p'dict' III. similiter Ideo, &c. Idem Rast. Ent.  
185. b. bis. Bro. Vad. 218. Thomp. 435. Re-  
funco & Erit' quod solvit omnes denar' in po-  
tatu Ecclesie, &c. Bro. Met. 243.

Aliter quod solvit omnes denar' hucusque sol-  
vend'.

¶ **A**ctio non, quia dicitur quod ipse solvit  
p'fat' C. omnes & singulas denar' sunt  
in Indorsament' p'dict' spec' hucusque solvend'  
ad p'dict' Festum in eodem Indorsament' con-  
tent' secundum formam & effectum Indorsament'  
ill' videtur apud S. in Com' C. Et hoc, &c.  
Idem Rast. 185. b. Vide postea Bar per Defea-  
zance.

¶ Aliter ad 2. Oblig' obe 1. jour de pay-  
ment. 3 Brownl. 113.

¶ Simile ad 2. Oblig' obe 2. jours de  
payment. Et p'dict' B. p. A. B. Actoris su-  
um vend' & defend' vim & injur' quando, &c.  
Et per' auditum p'dict' primi scripti Et ei  
legitur, &c. Per' etiam auditum Indorsament'  
ejusdem primi scripti Et ei legit' in hec ver-  
ba, The Condition, &c. Per' etiam auditum  
Indorsamenti ejusdem secundi scripti Et ei  
legit' in hec verba. The Condition, &c. Qui-  
bus lectis & auditis idem Def. dicit quod quer'  
Actionem non quia dicitur quod ipse post contractu  
(Part IV.) B b



on̄ p̄dict p̄rimi scripti & p̄dict Fest' Patibitat' tunc p̄or' sequen̄ solvit p̄fat' quer' p̄dict decem libz' in Andorsamene' ejusdem p̄rimi scripti spec' quas ei ad idem Festum solvisse debuit secundū formā & effectum ejusdem Andorsamenti p̄dict p̄rimi scripti videlicet apud S. p̄dict' Et etiam idem Def. dic' quod ipse post confectionē p̄dict secūdi scripti & ad p̄dict Fest' S̄ci Michis tunc p̄r' sequen̄ solvit p̄fat' quer' p̄dict' 6 l. in Andorsamene' p̄dict secūdi scripti spec' quas ei ad idem Festum solvisse debuit secundū formā & effectum ejusdem Andorsamenti p̄dict secūdi scripti videlicet apud S. p̄dict Et hoc, &c. Unde, &c.

Et p̄dict quer' dic' quod (p̄cludi non) quia dic' quod p̄dict Def. post confectionē p̄dict p̄rimi scripti & ad p̄dict Fest' Patibitat' tunc p̄r' sequen̄ non solvit p̄fat' quer' p̄dict 20 l. quas ei ad idem Fest' solvisse debuit secundū formā & effectum Andors' p̄dict p̄rimi scripti, Et etiam quod p̄dict Def. post confectionē p̄dict secūdi scripti & ad Fest' S̄ci Michis tunc p̄or' sequen̄ non solvit p̄fat' quer' p̄dict sex libz' quas ei ad idem Fest' solvisse debuit secundū formā & effectum Andorsamenti p̄dict secūdi scripti p̄ut p̄dict Def. sup̄ius allegavit Et hoc p̄r' quod inquit p̄ patriam Et p̄dict Def. similiter, &c. Vide Plit' Gen. 258. Et vide eund' 328. where the Issues are taken severally, & vide simile placitū ibidem 330. Ideo quoad triand' tam Exi' it' quam p̄dict ai' Exi', &c.

Aliter ad duas Oblig' secund' *Clift's Ent.* 147.

**E**T pōict' Milo in ppz' psona sua vcid  
 & defend' vim & injur' quando, &c. Et  
 pet' auditum pōict' pzi scripti Et ei legi-  
 tur, &c. pet' etiam auditum Condition' ejus-  
 dem pzi scripti Et ei legit' in hec verba,  
 The Condition, &c. Quibus lectis & auditis  
 idem MD dic' quod pōict' MA Action' suam  
 pōict' inde vers' eum habere non debet quia  
 dic' quod ipse solvit pfa' B. in vita sua pō  
 20 l. & 10 s. in eadem Conditione lupius  
 spec' sup pōict' 15 diem Aug' in Conditione  
 ill' lupius menc' quos ei sup eundem diem  
 solvisse debuit secundum form' & effectum  
 Condition' ill' videlicet apud R. pōict' Et hoc  
 parat' est verificare Unde pet' judic' si pōict'  
 MA Action' suam pōict' inde vers' eid' habere  
 debeat &c. Et pet' ulterius idem MD audit' pō'  
 secundi scripti Et ei legit', &c. pet' etiam auditu'  
 Condition' ejusdem secundi scripti Et ei legitur  
 in hec verba, The Condition, &c. Quibus lectis  
 & auditis idem MD dic' quod pōict' MA Action'  
 suam pōict' inde vers' eid' habere non debet  
 quia dic' quod ipse solvit pfa' B. in vita sua  
 pōict' 39 l. & 9 s. in eadem Conditione lupius  
 spec' sup pōict' 30 diem Julii in Condition'  
 ill' lupius menc' quos ei sup eund' diem sol-  
 visse debuit secund' formam & effectum Con-  
 dition' ill' videlicet apud R. pōict' Et hoc pa-  
 rat' est verificare Unde pet' Judic' si pōict'

Ad Actionem suam pōict inde vers' eid' habere debeat, &c.

Aliter secundum Brownl. Red. 192.

**E**t pōict W. in ppz' pson, &c. Et per' auditum pōict pimi Scripti Et ei legit', &c. per' etiam auditum Condition, &c. Et ei legit' in hec verba, &c. per' etiam auditum pō secundi Scripti, &c. ut antea. Quibus lectis & auditis idem W. quoad pō 120 l. quas pōict J. B. virtute pōict pimi scripti Obl' supius erigit vers' eum dic' quod Actionem non quia dic' quod ipse solvit pōict J. B. sup pōict 29 diem Septem in pōict Condition pōict pimi scripti supius spes pōict' 66 l. & 4s. quos ipse pōict' J. B. in & sup pōict diem solvisse debuit secundum formam & effectum Condition ill' didet apud pōict domū manconat ipsius J. C. in A. S. pōict' in pōict' Com C. Et hoc parat' est verificare Unde per' iudic' si pōict J. B. Actionem suam pōict' inde vers' eum here debeat, &c. Et quoad pōict' al' 120 l. quas pōict J. B. virtute pōict' secundi scripti Oblig' supius petit pōict W. dic', &c. (ut supra ad pimi Oblig'.)

Et pōict J. B. quoad pōict placitum pōict' W. quoad pōict' 120 l. virtute pōict pimi scripti Oblig' supius petit' in Bar' placitat' dic' quod ipse pcludi non, &c. quia dic' quod pōict' W. non solvit eidem J. B. sup pōict' 29 diem Septem in pōict Condition pōict pimi



primi scripti supius spec' p'dict' 66 l. 4 s. quos  
 ei in & sup eund' diē soluisse debuit secund'  
 formā & effectum Conditionis ill' prout p'dict'  
 W. supius allegabit Et hoc pet' quod inquit'  
 rat' p' patriam Et p'dict' W. similiter, &c.  
 Et quoad p'dict' placitum p'dict' W. pro al'  
 120 l. virtute p'dict' secundi script' Oblig'  
 supius petit' in Barr' placitat' idem J. F.  
 dic' quod p'dict' W. non solvit, &c. (ut antea)  
 Ideo quoad triand, &c.

Aliter per Payment per Surety plead'.

¶ **Q**uibus lectis & auditis idem W. dic'  
 quod p'dict' R. F. (Action non, &c.)  
 quia quoad p'dict' 40 l. de p'dict' 86 l. parcel'  
 quas p'dict' R. F. virtute p'dict' primi script'  
 supius erigit vers' eum idē W. dic' quod  
 p'dict' H. W. in Conditione p'dict' nōiat' sol-  
 vit p'fat' R. F. p'dict' 20 l. sup diē, &c. quas  
 idem H. W. ad vel sup eund' diē ei sol-  
 visse debuit secund' formā & effectum Con-  
 ditionis ejusdem primi script' videlicet apud S.  
 p'dict' in Com' p'dict' Et hoc, &c. Unde, &c. Et  
 quoad p'dict' 46 l. de p'dict' 86 l. resid' quas p'dict'  
 R. F. virtute secundi script' p'dict' supius erigit,  
 &c. (ut antea)

Precludi non, Quia dic' quod p'dict' H. W. non  
 solvit eidem R. F. p'dict' 20 l. sup p'dict' 14 diē  
 Feb. quas ipse idem H. W. ei ad in vel  
 super eund' diē solvisse debuit secund' for-  
 mā & effectum ejusdem primi script' p'ut'  
 p'dict' W. supius inde allegabit Et hoc pet' qd'  
 B b 3 inquitatur

## Bar al Debt sur Obl'.

inquiratur p P'ziam Et pō M. inde alit' Et quoad pō 46 l. de pō 86 l. resō virtute pō secundi scripti supius exat' supius in Barr' plicat' dic' quod ipse (pcludi non) &c. ut antea. Vide Rob. Ent. 221.

Aliter Secundum Thomps. 434.

A. **Q**uibus lectis & auditis (Accōid non) quia dic' quod pō J. solvit p'fat' quer' 20 l. sup pō 10 diem Rob. qui fuit in Anno Dñi, &c. quas pō J. & Def. seu eorū alter ei in & sup eundē diem solvisse debuer' secundum formā & effectum Condition' pō videt' apud M. in Cond pō Et hoc, &c. Unde, &c. pcludi non quia dic' quod pō J. non solvit p'fat' quer' p'ed, &c. (ut supra) prout p'ed Def. superius allegabit Et hoc per', &c.

Aliter ad tres Obl' post Oyer del several Conditions, Repl' & tres several Issues sur non solvit severalment.

A. **E**t pō Def. per T. B. Att' suum veni & defend vim & injur' quando, &c. Et per' auditum pō p'imi script' Obl' Et ei legitur, &c. per' etiam auditū Condition' ejusdem p'imi script' Et ei legitur in hec verba The Condition, &c. quibus lectis & auditis idem Def. dic' quod pō quer' Actionem

Actionem suam p<sup>o</sup> vers<sup>o</sup> eum here non de-  
bet quia dic<sup>r</sup> quod ipse solvit p<sup>o</sup>fat quer<sup>r</sup> p<sup>o</sup>  
40 s. sup p<sup>o</sup>fat Festival<sup>r</sup> diem Annunciation<sup>r</sup>  
bte Marie Virginis quos ei ad vel sup eund<sup>m</sup>  
diem solvisse debuit secund<sup>m</sup> formam & effec-  
tum Condi<sup>o</sup>ion<sup>r</sup> ill<sup>r</sup> videte apud W. p<sup>o</sup> in  
Corn<sup>m</sup> p<sup>o</sup> ad p<sup>o</sup> tunc domum man<sup>o</sup>conal<sup>r</sup> p<sup>o</sup>  
Quer<sup>r</sup> ihm Et hoc parat<sup>r</sup> est verificare Unde  
pet<sup>r</sup> iudic<sup>r</sup> si p<sup>o</sup> quer<sup>r</sup> Action<sup>m</sup> suam p<sup>o</sup> inde  
vers<sup>o</sup> eum here debeat, &c. Et pet<sup>r</sup> auditum  
p<sup>o</sup> secundi scripti Et ei legitur, &c. pet<sup>r</sup> e-  
tiam auditum Condi<sup>o</sup>ion<sup>r</sup> ejusdem secundi  
scripti Et ei legitur in hec verba ff. The  
Condition, &c. quibus lectis & auditis idem  
Def. dic<sup>r</sup> q<sup>o</sup> p<sup>o</sup> Quer<sup>r</sup> Action<sup>m</sup>, &c. here non debet  
quia dic<sup>r</sup> q<sup>o</sup> ipse idem Def. solvit p<sup>o</sup>fat quer<sup>r</sup> p<sup>o</sup>  
40 s. sup p<sup>o</sup> Festival<sup>r</sup> diem S. M. quos ei ad vel  
sup eundem diem solvisse debuit secund<sup>m</sup> formam  
& effectum Condi<sup>o</sup>ion<sup>r</sup> ill<sup>r</sup> apud tunc domum  
man<sup>o</sup>conal<sup>r</sup> p<sup>o</sup> quer<sup>r</sup> in W. p<sup>o</sup> Et hoc, &c.  
Unde, &c. pet<sup>r</sup> etiam auditum p<sup>o</sup> tertii script<sup>r</sup>  
Obl<sup>r</sup> & ei legitur, &c. pet<sup>r</sup> etiam auditum  
Condi<sup>o</sup>ion<sup>r</sup> ejusdem tertii script<sup>r</sup> Obl<sup>r</sup> & ei  
legitur in hec verba ff. The Condition, &c.  
Quibus lectis & auditis idem Def. dic<sup>r</sup> quod  
(Action<sup>m</sup> non) quia dic<sup>r</sup> quod ipse solvit p<sup>o</sup>fat  
quer<sup>r</sup> p<sup>o</sup> 40 s. sup p<sup>o</sup> Festival<sup>r</sup> diem Annunc<sup>r</sup>  
bte M. Virg<sup>r</sup> qui fuit in Anno D<sup>ni</sup> 1643.  
quos ei ad vel sup eund<sup>m</sup> diem solvisse debuit  
secundum formam & effectum Condi<sup>o</sup>ion<sup>r</sup> ill<sup>r</sup>  
apud tunc domum man<sup>o</sup>conal<sup>r</sup> p<sup>o</sup> quer<sup>r</sup> in W.  
p<sup>o</sup> & hoc, &c. Unde, &c.

Et p<sup>o</sup> quer<sup>r</sup> quoad p<sup>o</sup> p<sup>o</sup>litum p<sup>o</sup> Def.  
quoad p<sup>o</sup> 80 s. de p<sup>o</sup> 12 l. virtute p<sup>o</sup> primi  
scripti sup<sup>o</sup> eract<sup>r</sup> sup<sup>o</sup> in barram inde  
B b 4 p<sup>o</sup>litat<sup>r</sup>



plitat' dic' quod ipse p aliqua in eodem pti-  
 ro pallegat' ab Actone sua pō inde habens  
 pcludi non debet, Quia dic' quod pō Def.  
 non solvit eidem quer' pō 40 s. in Condicio-  
 ne pō primi scripti superius spec' sup pō Fes-  
 tival' diem Annunc' hie M. Virg' quos ei  
 ad vel sup eund diem solvisse debuit secun-  
 dum formam & effectum Condition ill' put  
 predict' def. superius inde allegavit Et hoc  
 pet' quod inquiratur per P'ziam Et predict'  
 Def. silit' Et quoad predict' plitum pdict'  
 Def. quoad predict' al 40 s. de pdict' 12 l.  
 parcel' virtute pō secundi scripti superius ex-  
 act' superius in barram inde plitat' dic' (pcludi  
 non) quia dic' quod idem Def. non solvit,  
 (sc. ut antea) Et hoc pet' quod inquiratur  
 p P'ziam Et pō Def. silit' (Et sic p tercio  
 scripto) Et hoc pet' quod inquiratur p P'ziam  
 Et pō Def. silit' Ideo quoad triand tam Ex-  
 it' ill' quam pō al' Crit' int' partes pdict'  
 junct' pcept' est Vic' quod Venire fac' hic a  
 die Scti M. in tres Sept' xii. sc. Per quos,  
 sc. Et qui nec, sc. Ad recognid, sc. quia  
 tam, sc.

Vide Ast. Entr. 218. als' 248. See also  
 1 Mod. Intr. 202, &c. The Defendant  
 pleads to the First Bond *solvit ad diem*, the  
 like to the Second Bond; and that he saved  
 and kept harmless the Plaintiff from the  
 Bond mentioned in the Condition: Also  
*solvit ad diem* pleaded to the Third Bond. Se-  
 veral Replications and Issues thereon. See  
 Winch.

*Winch. Ent. 280. Count sur tres Obl', le primer pur performance de Covenants & les deux auters pur payment des deniers. As to the first the Defendant shews two Indentures, and that he had performed the Covenants, and to the others he pleads Payment. The Plaintiff as to the first alledges Breach for Non-payment of 350 l. contained in the two Indentures; and as to the second and third he takes Issue: Demurrer to the Breach, and Venire fac'. As to the others, Joinder in Demurrer, and Defendant relicta verificatione as to the two Issues, Cogn' Actionem, and Judgment for the Plaintiff upon Demurrer.*

Aliter, Quod solvit ad duos dies & alter nondum est incurfus.

¶ **E** poict Def. p A. l. Att' suum vend & defend vim & injur' quando, &c. Et per' auditum script' p'd; Et ei legitur, &c. per' etiam auditum Condition' eiusdem scripti Et ei legitur in hec verba. ¶ The Condition, &c. Quib' lectis & auditis idem Def. dic' quod predict' A. solvit p'fat' C. p'dict' 25 l. super p'dict' primum diem Aug' p'ior' sequen' dat' script' p'dict' & p'dict' al' 25 l. super p'dict' primum diem Martii qui fuit in Anno Domini 1669. supradicto quas predict' A. ei ad in vel super eosdem separata dies solvisse debuit secundum formam & etc

& effectum Conditioni p̄dicti videlicet apud Londoni p̄dicti in Paroch & Ward p̄dicti Et ulterius idem Def. dic quod p̄dicti primus dies Sept' Anno Domini 1670. nondum est incursus Et hoc parat' est verificare Unde per' iudic' si p̄dicti Quer' Actionem suam p̄dicta' versum habere debeat, &c.

Et p̄dicta' quer' dic' quod ipse p̄ aliqua p̄ allegat' ab Actione sua p̄dicti h̄endo precludi non debet, Quia p̄testando quod p̄dicta' A. non p̄formabit seu p̄implebit aliqua in Conditione p̄dicti spec' ex parte sua p̄formand' p̄ placito idem quer' dic' quod p̄dicti A. non solvit p̄stat quer' 25 l. sup p̄dicti primum diem Aug' p̄r' post dat' scripi' Obl' p̄dicti quas ei sup eund' diem solvisse debuit secundum formam & effectum scripi' Obl' p̄dicti Et hoc per' quod inquiratur p̄ p̄riam Et p̄ Def. iustic' Ideo p̄cept' est iustic', &c.

Vide 1 Mod. Intr. 178. See the like Plea, Repl', and Issue. Bro. Vad. Mecum 177.

Solvit ad duos dies & antequam resid' fuit debet' Quer' exhibuit Billam.

II. **E**T p̄dicti R. H. p̄ G. A. Attorid suid vend' & defend' vim & injur' quando, &c. Et dic' quod Acto non, &c. quia dic' quod ipse idem R. apud, &c. solvit eidem M. 7 l. de p̄dicti 31 l. in Conditioni scripi' Obl' p̄d' supius mentionat' parcell' in & sup p̄dicti 30 diem Julii Anno Dñi 1686. supradico Et apud



pud Paroch pōict in Comd pōict in & sup  
30 diem Julii Anno Dñi 1687. pōict sum-  
mam sex librarū amplius inde eidem W. sol-  
vit secundum formā & effectum Conditionis pō  
Et quoad residū pōict sum' 31 l. in Condi-  
tione pōict superius spec' idem R. dic' quod  
pō W. antequam aliqua pars pō residū de  
pō summa 31 l. de ea esse debendū billam suam  
exhibuit Et hoc, &c. Unde, &c.

Et pō W. dic' quod pcludi non, Quia dic'  
quod pō R. non solvit eidem W. pō 6 l. sup  
pō 30 diem Julii Anno Dñi 1687. in Con-  
dizione pō superius menc' pat pō R. superius  
plicitando allegabit Et hoc per' quod inquis-  
ratur p pñiam Et pō R. sitit', &c. Ideo  
vend', &c. See Brownl. Red. 222.

Solvit ante diem al Debt' sur obligacon, &c.

*Peytoe vers' Hyde, Hill. 8 Annæ.*

Narr' sur Obl' pro 200 l. dat' 28 Maii 1709. Cro. Jac.  
Condition pur Payment de 100 l. avec <sup>435.</sup> 5 Co.  
Interest, &c. Sur le 31 die Julii tunc prox' <sup>17.</sup>  
sequend'. *After Oyer the Defendant pleads  
as follows.*

ff. **A**ctio non quia dic' quod pō J. R.  
in Conditione pō superius menconat'  
solvit pñat J. P. pō Centū libz' cum inter-  
esse p eisdem secundū ratam quatuor librarū  
p Centum p Annū sup vicesimū diem Julii  
pr'

pr' sequen' dat' scripti Obligator' pō vide'te  
apud Westm pō in Com pō Et hoc parat'  
est verificare Unde pet' iudicium si pō J. P.  
Action' suam pō inde Plus ipsum P. here  
seu manutene're debeat, &c.

Demurr' ad  
placitum in  
Debt. 3 Leo.  
293.

Et pō J. P. dic' quod ipse p aliqua p pō  
P. supius p'ticando allegat' ob Action' sua pō  
inde Plus ipsum P. hend' pcludi non debet  
quia dic' quod placitum pō p ipsum P. mo-  
do & forma pō supius p'ticat' materiaque in  
eodem content' minus sufficien' in lege ex-  
istunt ad ipsum J. ab Actione sua pō inde  
vers' p'fat' P. hend' pcludens Ad quod quidem  
p'ticum ipse idem J. necesse non het nec p  
legem terre tenetur aliquo modo respondere  
Et hoc parat' est verificare unde p defectu  
sufficien' respons' in hac parte ipse idem J.  
pet' iudicium & de hūm suū pō unacum damp-  
nis suis oc'one deten'con' debi illius sibi ad-  
iudicari, &c. Et p causis moration' in Lege  
in hac parte idem J. secund' formam Stat' in  
humōi casu nup edit' & p'obis' ostendit &  
Cur' hic monstrat has causas sequen' vide'te  
eo quod si talis solutio fact' fuit p p'fat' P.  
pō Cent' Librar' Et interesse tunc debet'  
quā idem P. supius placitabit idem P. pla-  
citare debet solution' ill' fuisse ad diem in pō  
condicōn' script' pō men'conat' quodqz mate-  
ria illa sic p'ticat' est solummodo materia Cui-  
dencie ad pband' Erit' ill' Et pō P. placi-  
tare debet tal' solucōn' in tali modo quod  
Erit' supinde poteritungi Et eo quod p'ti-  
cum pō non continet in se aliquam materiam  
sup quam Eritus poteritungi Et p'ticum  
est incertum duplex & caret forma, &c.

Et



Et pō R. dicit quod p̄litum pō p̄ ipsum Joinder in  
 R. modo & forma pō sup̄ius p̄litat' materi- in Demur.  
 que in eodem content' bonū & sufficiend' in  
 ege existunt ad ipsum R. ab acōne sua p̄ced  
 inde vers' ipsum R. hēnd p̄cludend' quod qui-  
 em p̄litum materiamqz in eodem content' imple  
 dem R. parat' est v̄ficare & p̄bare put Cur,  
 &c. Et quia pō R. ad p̄litum ill' non re-  
 pond' nec ill' hucusque aliqualit' dedic' ipse  
 dem R. (ut prius) p̄t judiciū Et quod pō  
 R. ab acōne sua pō inde vers' eum hēnd  
 p̄cludatur, &c. Sed quia Cur d̄ce Dñe Rñe  
 nunc hic de iudicio suo de & sup̄ p̄missis red- Judgment  
 iend' nondum advisatur dies inde dat' est par- pro Quer'.  
 tibus pō coram Dña Rña apud Westm̄ us-  
 que diem——pr' post——de iudicio suo  
 de & sup̄ p̄missis ill' audiend' eo quod Cur  
 d̄ce Dñe Rñe nunc hic inde nondum, &c.

Solvit ad omnia Festa pr̄terit' & ante Festum  
 M. quer' Original' suum impetravit.

**A**ctio non, Quia dic' quod ipse solvit  
 p̄fat quer' omnes & singulas denar'  
 summas ad p̄dict' Fest' in eadem Conditione  
 sup̄ius limitat' usqz Festum S̄ci M. Archi  
 Anno, &c. quas ei ad eadem Festa solville  
 debuit secundum formā & effectum Condition  
 ill' videt' apud B. in Comd' pō Et ulterius  
 idem def. dic' quod ante pō Festum S̄ci  
 M. Anno, &c. pō quer' h̄re suum Original'  
 de deho pō vers' eum impetravit Et hoc,  
 &c.



et. See Clerk's Assist. 118. And Hansard's Ent. 108.

Aliter, & Repl' Rejo' & Exit' inde.

ff. **Q**uibus lris & auditis (Accon non) Quia dic' quod immediate post sigillacon script' pō idem A. solvit p̄fat D. 20 l. Et ad pō fest' Epiph. Dñi tunc p̄or' sequen' 20 l. Et ad pō fest' E. D. tunc p̄or' sequen' 20 l. secundum formam & effectum Condiçion' pō videli apud D. in Com' pō Et ulterius idem A. dic' quod ante pō fest' E. D. tunc p̄r' sequen' pō B. breve suum Original' de deho vers' eum impetrabit Et hoc, et. Unde, et.

Et pō B. dic' p̄cludi non, Quia p̄testando quod pō A. non solvit eidem B. aliquam denar' sumam in Condiçion' pō supius spec' p̄out idem A. supius alleg' p̄ p̄lito idem B. dic' qđ pō A. non solvit eidem B. pō 20 l. ad pō fest' E. D. Anno Regni Dñi Regis nunc 7. quas ei ad idem festum solvisse debuit secundum formam & effectum Condiçion' pō p̄ut pō A. supius allegabit Et hoc (et.) Unde p̄r' judic' & dehum suum pō uacuum dampnis, et. sibi adjudicari, et.

Et pō A. ut prius dic' qđ ipse solvit p̄fat B. pō 20 l. ad pō fest' E. D. Anno 7 supradicto quas ei ad idem fest' solvisse debuit secundum formam & effectum Condiçion' pō p̄ut idem A. sup allegabit Et de hoc p̄ord

non se sup P'iam, &c. See Placit. Gen.  
246.

ff. Sur Condition solvere quer' 20 l. ad finem 3 mensium postquam ipsa attingeret ad stat' 21 annorum Barr' p Condition pfornd p payment Repl' quod Def. non solvit secundum Condition. Bro. Red. 192. 3 Brownl. 117.

Barr' per Delivery Siliginis & Solution' denar'.

I. **Q**uibus lectis & auditis (Action non) quia dic' quod ipse int' p'fat' Festa S'ci Mich' Archi & Pativitat' D'ni nostri pr' post Dat' script' p'd scit' 9 die Octob' Anno regni D'ne R'ne nunc 24. deliberavit p'd T. quatuor quarter' siliginis & 10 quarter' hordei boni & merchandizabil' de (&c.) Ac etiam solvit p'd T. p'd 20 s. que quidem quatuor quarter' siliginis & decem quarter' hordei & 20 s. ei int' p'd Fest' deliberasse & solvisse debuit secundum formam & effectum Condition p'd scit' apud Castrum C. p'd Et hoc, &c. Unde, &c.

Et p'dict C. p'cludi non quia prestando q'd p'd A. non solvit eidem C. p'd 20 s. int' p'dict Fest' S'ci Mich' Archi & Pativitat' D'ni nostri put p'd A. superius allegavit p' p'rito dic' quod p'd A. non deliberavit eidem C. p'd quatuor quarter' siliginis & decem quarter' hordei int' p'd Fest' S'ci Mich' Archi & Pativitat'.

cai' Dñi nostri que ipse inc' pō Festa des-  
 liberasse debuit secundum formam & effectum  
 Condition pō pūc pō J. supius allegavit Et  
 hoc pet' quod inquiratur p P'ziam, &c.

Vide Bro. Red. 192. 1 Brownl. 83. 3  
 Brownl. 116. Simile ad solvend' pecun' &  
 deliberand' bona. Idem Bro. Red. 173. Vide  
 Placit' Gen' 282. Quod solvit denar' & delibe-  
 ravit incr'um, Repl' non deliberavit.

Bar per delivery tantum.

ff. **E**T pō J. p T. C. Att' suum vend' & de-  
 fend' vim & injur' quando, &c. Et pet'  
 audit' scripti pō Et ei legitur, &c. Pet' es-  
 tiam auditum Indorsamenti ejusdem scripti &  
 ei legitur in hec verba, The Condition, &c.  
 Quibus lectis & auditis idem J. dic' quod  
 pō R. Actionē suam pō vers' eum habere  
 non debet quia dic' quod ipse deliberabit p-  
 fact' R. sex Quarteria hordei merchandizabit  
 optimi generis in Indorsamento pō supius  
 spec' in pō separal' diebus Festorum S'ci S.  
 Martyni in eodem Indors' supius menc' vi-  
 dete in quolibet Festo die pō separal' Fes-  
 torum diez S'ci S. Martyni unum Quateri-  
 um inde que ei in & sup separalibus diebus  
 ill' deliberasse debuit secundum formam & ef-  
 fectum Indorsamenti ill' videle apud p'dict  
 romum mansional' pō R. in M. pō in Com  
 pō Et hoc parat' est verificare Unde pet' ju-  
 di' si pō R. Actionē, &c.



Et p̄s R. dic' p̄cludi non; Quia protes-  
tando quod p̄s J. non deliberabit eidem R.  
aliquod Quarterium hordei p̄s in aliquo Fes-  
to die p̄dictorum Festorum dierum in Indo-  
samento p̄s supius content' put p̄s J. supius  
allegavit p̄ p̄lico dic' qđ p̄dic' J. non delibera-  
bit eidem R. in Festo S'ci S. Martij' qui  
fuit in Anno Dñi 1604. unum quarter' hor-  
dei de p̄s sex quarter hordei quod eidem R. in &  
sup eodem Festo die deliberasse debuit secundum  
formam & effectum Indosament' ill' p̄s Et hoc  
(&c.) Unde per' judic' & debum suum p̄s unacđ  
dampnis suis occasione detentionis Debi ill'  
ibi adjudicari, &c.

Et p̄s J. dic' quod ipse deliberabit p̄fati  
R. in p̄s Fest' die S'ci S. Mart' qui fuit in  
Anno Dñi 1604. supradicto p̄s quarter' hor-  
dei quod in & sup eodem Festo die delibe-  
rasse debuit secundum formam & effectum  
Indosament' p̄s put ipse supius allegavit Et  
de hoc pond te sup P̄nam Et p̄s R. alie'  
Ideo, &c.

Vide 2 Browne's Ent. 101.

Aliter, Quod deliberavit bona secundum Con-  
dition'.

II. **Q**uando, &c. Et per', &c. per' etiam  
audit', &c. Et ei legitur in hec Oba,  
The Condition, &c. Quibus lectis & auditis  
idem R. dic' quod Accionē non, quia dic'  
quod ipse deliberavit p̄fati L. plenum nume-  
rum octo Carectat' bonarum & sufficiend' vils  
(Part IV.) Co Isarum

losarum mattarum qualibet Carectat' continend' plenum nemerum sexaginta in Conditione pō superius spec' liberat' ab oībus oneribus cariagii sive alicujus alterius rei cuiuscunque ad pō separal' dies in eadem Conditione supius limitat' deliberans quas ipse & pō R. & J. seu eorum aliquis ei ad vel ante eodē dies deliberasse debuer' secundum formam & effectum Condition' pō videlicet apud L. pō in Paroch' S'ci P. in Marda de C. ad pō tunc domum mansional' pō L. Atuat' sup C. ibm Et hoc, &c. Unde, &c.

Precavi non Quia ptestando quod ptes R. non deliberabit eidem L. aliquam carectat' villolarū mattarū de Carectat' ptes in Conditione pō supius spec' ad aliquem pō dierum in Conditione pō supius limitat' deliberans put pō R. supius allegabit pro pōto idem L. dic' quod pō R. non deliberabit eidem L. unam carectat' villolarum mattarum ad vel ante decimū diem Aug' Anno Regni Dñi Regis quinto quam ipse & ptes R. & J. seu eorum aliquis ei ad vel ante eundē diem deliberasse debuer' secundum formam & effectum Condition' pō prout ptes R. supius allegabit Et hoc parat' est verificare, &c.

Et pō R. ut prius dic' quod ipse deliberabit ptesat' L. ptes carectat' villolarū mattarū ad ptes decimū diem A. Anno regni Dñi Regis nunc quinto supradicto quam ipse & ptesat' R. & J. seu eorum aliquis eidem L. ad vel ante eundē diem deliberasse debuer' secundum formam & effectum Condition' ptes prout ipse supius allegabit, Et de hoc, &c. Ideo, &c. Vide Thomp. Entr. 181.



Bar, aliter al Obl' per Conditions per Form'.

I. **Q**uod scriptum talem in se continet Conditionem, videlicet quod, &c. Et sic titat' adinde sine petie' audit' Scripti vel Conditionis. Rast. Ent. 154, 155.

ff. Al' Obl' Subnator' & Societat' Perator' L. negotiand' in Indias Oriental' vers' Factor' obe condition' a render un Woyer & fec' Account, & deliberer & payer les bis & denar' del Societ' al Governor', Barr' quod verum & pfectum computum reddidit & ita bona denar' &c. ptinen' Societat' deliberauit & solvit Gubernatori, &c. Brownl. Red. 27. Vide Re. Dec. 240.

ff. Sillis Barr' & Repl' que ad receive 1000l. & ne ad pay, &c. Rejoinder que voir & que il ad receive 500l. Et que il ad don' & voir Account de ceo. Demurrer. Et Rejoinder adjudge male. 1 Lut. 579.

ff. Al' Obl' obe Condition' de curatione frenesis Barr' prest' quod totaliter curavit, &c. p' Plito quod C. p' malegesturam in cieta relapsus fuit. Rob. Ent. 230. Vide Bro. Met. 246.

ff. Barr' al Obl', quod Def. quiete pmisit L. & Assign' abcarriare lignum Carbonat' absq' interruptione Def. sive alicuius p' se, &c. Repl'. non pmisit L. abcarriare totum lignum. Rob. Ent. 235.



## Bar al Debt sur Obl'.

¶ Bar al Obl' quod T. ad prox' Cur secundum cons Panerii sursum reddidit in manus Dñi Tentum p'dict ad usum quer. Winch. Ent. 241.

¶ Al Condition de inveniens & providens pro Uxore quer & liberis suis, Bar quod invenit & p'vidit sufficiens cibum potum, &c. 1 Mod. Intr. 100. Clerk's Assist. 345.

¶ Al Condition, That the Defendant should expel W. R. from a Messuage, Bar quod expulit. Repl' quod non, Reso' & Issue Cl. Ass. 352.

¶ Condition to deliver up certain Articles of Agreement, Bar quod delibavit, Repl' & Issue. Idem 363.

¶ Def. al Obl' p'titat' p'formacon' Officii Predicatores, &c. Repl' quod non legebat Preces apuduat' sup Festum S'ci Mich' Clift. 180.

¶ Condition de separabilibus rebus faciend' Bar quod non dedit Def. sal nitrum ad faciend' pulverem bombardicum. Quod Def obtulit deliberare fenum quer' quolibet anni & quod ipse recusabit accipere, & quer' non misit Def. equum ad pasturand', Repl' quod non obtulit fenum. Co. Ent. 127.

Conditions perform' de rebus Ecclesiasticis.

II. **B**AR' al' Obl', quod Def. presentabit quer' ad Ecclesiam, de qua non fuit capax eo quod fuit Epus, & non habuit Liscenc' ad capiend' Beneficium, Demurr' inde. Rast. Ent. 182.

II. Quod Archiepus dispensabit cum Def. de exhibicione Inventorii, quod Ordinarius non limitabit Def. solvere aliqua deba Testatoris, & quod pimplebit Testamentum. Co. Ent. 129.

II. Quod Iudex Cur' Prerogative non appunctuabit Def. facere aliquam relaxationem. Demurrer inde. Co. Ent. 130.

II. Al Obl' Epō parere Mandat' Ecclesie, Def. post Oper plicat' quod Excommunicat' fuit p Vicar' Epd, & quod ante consecrationem script' psecut' fuit Breve de Canzone admittenda direct' & deliberat' Epō & scriptum pō p Canzone dedit & adtunc habuisse debuit absolutionem, & semper abinde parat' fuit parere Mandat', sed Epus' recusavit ipsum absolvere p quod incapacitat' existit parere. Nept' semper parat' Absolutionem dare, sed nunquam requisit' & Exit' inde. Clift. 194.

*Bar per Delivery & Acceptance des Autres Choses.*

**D**E B T upon a Bond of Twenty-five Pounds with a Subtle Condition to avoid the Statute of *Usury*. The Defendant pleads, That after the Day of Payment of Fourteen Pounds, which was to be paid by the Condition, he had paid the Plaintiff Eight Pounds Seventeen Shillings Six-pence. And that he and one T. S. had executed a Bond to the Plaintiff of Twenty Pounds, to pay him Ten Pounds in full Satisfaction and Discharge of the first Bond, and of all Money due thereon, which the Plaintiff had accepted. Plaintiff demurrs.

Upon the Argument it was resolved, That the Plea was ill, because admitting that a new Bond might be given in Satisfaction of the Money due upon the other Bond; yet it appeared that the first Bond, was forfeited, and all the Penalty was due in Law, and then Acceptance of Security by a less Sum (which is the Case here) could not be any Satisfaction of a greater Sum. 5. Co. 117. *Pinnel's Case*. But then it was insisted, That it appears by the Condition that the Bond was *Usurious*: But then it was resolved, That the Statute ought to have been pleaded; for if *prima facie* upon View of the Condition, it appeared to be *Usury*, yet perhaps the Plaintiff might have rectified it by his Replication, as in *Buckley and Godbank's Case*, 2 Cro. 677. Judgment was given



given for the Plaintiff. 1 *Lut.* 465, 466. And see there several Books cited, where it was held by the Court, That in Debt upon Bond with Condition to pay 8 *l.* it was a good Plea, that the Defendant before the Day had paid the Plaintiff 5 *l.* &c. in Satisfaction of the 8 *l.*

See also 1 *Lut.* 502. Plea that the Plaintiff, after the Day in the Condition, had accepted another Bond in Discharge, and upon Demurrer Judgment for the Plaintiff.

See also 3 *Lev. Rep.* 55. where the Executor pleaded a Concord for a Bond to be given by him in Satisfaction of the Bond of the Testator, and Security given accordingly. The Plaintiff demurred, and Judgment given for the Plaintiff by the whole Court; for that a Bond given in Satisfaction of another Bond, is not any Discharge, be it given upon Concord or not, and the Concord could not amend the Matter; and yet the New Bond obliged the Plaintiff *de bonis propriis*, whereas by the first Bond he was only obliged *de bonis Testatoris*. *Vide postea Bar per Statute Ley, Et Bar per Exec' & Adm'.*

Bar per delivery & acceptance de autres Choses.

ff. **D**Ebt' sur Oblig' Barr' quod ante diem in Conditione Def. solvit quer' 30 s. in satisfactione tam Debi petit' quam omnium at' demand' p' Agreement', &c. Repl' quod non solvit in satisfactione, &c. Vide 1 Brownl. 111. Bro. Red. 190.

ff. At Oblig' Barr' quod Def. ante diem in Conditione delibavit 10. carecat' maeremii in satisfactione denar' in Conditione. Repl' protest' non cogn' aliqua, p' placito non recepit maeremium in satisfactione debi. 3 Brownl. 142.

ff. Debt sur 2 Oblig' Barr' quoad und' qd solvit ad diem, quoad at' Oblig' quod delibavit grana in satisfactione Et quer' acceptavit, &c.---Et p'dict' A. p' T. D. Attorn' suum ven' & defend' vim & injur' quando, &c. Et pet' (&c.) Quibus lectis & auditis idem A. dic' quod p'dict' A. Action' non, quia quoad p'dict' 8 l. de p'dict' 20 l. quas p'dict' A. erigit vers' eum virtute p'dict' primi scripti dic' quod ipse solvit p'fat' A. p'dict' 4 l. in p'dict' 20 die Sept' inter p'dict' horas primam & quartam post meridiem ejusdem diei quas ei in eodem die & inter easdem horas solvisse debuit secund' formam & effectum Indorsamenti ill' videlicet apud E. p'dict' in p'dict' porticu Ecclesie parochialis, &c. Et quoad p'dict' 12 l. de p'dict' 20 l. resid' quas p'dict' A. erigit vers' eum virtute p'dict' secundi scripti idem A. dic' quod

quod ipse post confectio[n]e[m] ejusdem scripti & ante p[re]dict[um] Festum pur[us] b[ea]te Marie in Condi-  
tione ejusdem scripti spec[ie] scilicet 20 die Dec[embris]  
Anno Regni dicte Domine Regine 22 apud  
S. in Com[uni] p[re]dict[um] delibavit p[re]fat[us] A. duo quar-  
ter & dimid[um] quarter[um] Aliginis, duo quarter &  
dimid[um] quarter[um] hordei duo quarter & dimid[um]  
quarter[um] le Buck un[um] quarter[um] septem modios  
tria sata vocat[ur] Pecks & dimid[um] sati &  
tres pintas Avenarum in satisfactio[n]e p[re]-  
dict[um] 6 l. p[re]fat[us] A. in p[re]dict[um] Fest[um] pur[us] b[ea]te  
Marie solvend[um] que quidem duo quarter & di-  
mid[um] quarter[um] critici (et.) p[re]dict[us] A. in satisfac-  
tione p[re]dict[um] sex lib[ris] de eodem A. adunc & ibi-  
dem recepit Et hoc, et. Unde.

Precludi non, quia quoad p[re]dict[um] 8 l. de p[re]s[ent]e  
20 l. quas ipse exigit vers[us] p[re]fat[um] A. virtute  
p[re]dict[um] primi scripti die quod p[re]dict[us] A. non  
solvit eidem A. p[re]dict[um] 4 l. in p[re]dict[um] Indors[um]  
p[re]dict[um] primi scripti sup[er]ius spec[ie] in p[re]dict[um] 21  
die Sept[embris] inter p[re]dict[um] horas primam & quar-  
tam post meridiem ejusdem diei quas ei in  
eodem die & int[er] easdem horas solvisse debuit  
secund[um] form[am] & effectum Indorsam[ent]i ill[ud] put  
p[re]dict[us] A. sup[er]ius alleg[avit] Et hoc pet[itur] quod in-  
quirat p[er] priam Et p[re]dict[us] A. similiter Et quoad  
p[re]dict[um] 12 l. de p[re]dict[us] 20 l. restis quas ipse exi-  
git vers[us] p[re]fat[um] A. virtute p[re]dict[um] secundi scripti  
protestando die quod p[re]dict[us] A. non delibavit  
eidem A. p[re]dict[um] duo quarter & dimid[um] quarter[um]  
critici, (et.) p[er] placito idem A. die quod ip-  
se non recepit nec acceptavit p[re]dict[um] duo quarter  
& demid[um] quarter[um] critici (et.) de p[re]fat[us] A. in  
plen[um] satisfactio[n]e p[re]dict[um] sex lib[ris] in p[re]dict[um] Fest[um]  
pur[us] b[ea]te Marie solvend[um] put[atur] p[re]dict[us] A. sup[er]ius al-  
legabit Et hoc similiter pet[itur] quod inquirat p[er]  
priam



P'iam Et p'dict' J. similiter Ideo quoad tri-  
and, &c. Vide Rob. Ent. 196.

A. Alter in Debt sur Obl'. Barr' quod  
Def. existend' tent' cum T. p' Agreement'  
inter T. & Quer', p'dict' T. cum quodam R.  
delibaver' al' Obl' quer' pro secur' solutione  
denar' in exoneratione Obl' in quo Def.  
fuit tent', quod quer' accepit. Demur inde.  
Id. Rob. 188. Sitis Bar' Et Repl' quod  
R. non delibavit Obl' Et Illuc inde. Idem  
234.

A. Debt sur Obl' p' solutione 25 l. Barr'  
quod post diem solutionis Def. & un' T. p'  
Bill' penai devent' tent' quer', pro solutione  
28 l. Unde 25 l. fuer' p' eodem debito & 3 l.  
pro dampnis que quer' in plen' satisfactio-  
script' Obl' acceptavit Demurr' inde. Bro.  
Red. 236.

A. Debt sur Bill' Barr' quod ad diem so-  
lutionis Def. delibavit quer' sex vaccas in sa-  
tisfactione debi, quas quer' acceptavit. Repl'  
quod non delibavit, &c. & Illuc. Bro. Red.  
169. i Brownl. 76.

A. Debt sur Obl' ove Conditione quod A.  
& J. solverent quer' pro usu H. 36 l. ad dis-  
am. Bar p'dict' H. posuit se Apprent' al'  
J. p' Indent' p' 7. Annis & quod J. an-  
te diem solutionis & finem Termi exoneravit  
H. ex assensu H. de servitio p' restis Termi-  
ni & delibavit H. Indentur' ejus in plen'  
satisfactio p'dict' 36 l. quam H. acceptavit,  
Demurr' inde. Vide Winch. Ent. 186.

A. Pro secur' solutione Def. dedit Obl'.  
Clerk's Assist. 117.

¶ Quoad mutuat' non debet & quoad resid' quod quer' acceptabit duo Script' Obl' in plen' satisfactōi' resid' debi, Et Illuc quod non acceptabit. Rob. Ent. 192.

¶ Sur mutuat' Barr' quod Quer' acceptabit de def. locale in satisfactōi' debi Repl' quod recepit locale pro pignore, Et Traverse quod recepit in satisfactōi' debi. 3 Brownl. 135. Bro. Red. 202.

As to this *Bar* by Delivery and Acceptance of other Things, you may read more thereof at large in the Third Part of *Inst. Cler. fol.* 155, 156.

*Bar al' Obl' per tender & uncore prist.*

*Note,* This *Bar* is largely treated of in the Third Part of *Instructor*, *Tit. Uncore prist*, &c.

*Bar by Release and Acquittance.*

See the Third Part of *Instr. Clericalis Tit. General Bar*, and See *Bro. Red.* 99. *Clif.* 628. Release pleaded, *Repl' per non est factum*, *Bro. Red.* 186. *Thomp.* 155. *Plit. Gen.* 125. 147. 346. 1 *Bro.* 160, 177. *Bro. Vad.* 503. *Mod. Intr.* 241. *Rob. Ent.* 263. *Thomp.* 129. *Repl' quod Relaxacō fuit ratat' in dat' iudem.* *Hans.* 104.

¶ Res

¶ Release plead post ult' Continuance. Clif. 630. Bro. Red. 187. Plit. Gen. 349. Simile at the Assizes post Exit' junct'. Thomp. 431. Clif. 631.

¶ Three Obligors, one dies, the other two bring Debt. Defendant pleads the deceased released him of all Actions. Bro. Met. 249.

¶ Defendant pleads a Release to the other Obligor, who was bound in the same Bond. 2. Mod. Intr. 234. Bro. Vad' Mec'. 503.

¶ Solvit denar ante diem Orig' Et quer' dedit relaxacionem. Cl. Ass. 129. Rex' non est factum.

¶ Def. placitat Literam Licenc' Creditor' in natura Relaxationis. Thomp. 169. Clift. 147. Vide Hans. 62. Bro. Met. 49.

*Note*, Upon a Bond with Condition to pay at the Defendant's House upon Ten Days Notice; Defendant pleads, That the Plaintiff did not give Notice.

¶ Quibus lectis & auditis idem P. dic' qd' p'dict' M. Actionem suam p'dict' inde vers' eum here non debet, Quia dic' quod p'dict' M. non dedit noticiam de aut concernend' solucon' p'dict' 253 l. 2 s. 6 d. in Conditione p'dict' sup'ius menc' secund' formam & effectum Conditionis p'dict' Et hoc (tc.) Unde (tc.)

Precludi non quia dic' quod p'dict' A. modo def. & p'dict' C. H. non solver' nec eorum alter solvit eidem M. p'dict' 253 l. 2 s. 6 d. in Conditione p'dict' sup'ius menc' sup' p'dict' 11 die Partii in eadem Conditione specificat' quos ei super eundem diem solvisse debuer' secund' formam & effectum Conditionis ill' Et hoc



hoc parat' est verificare Unde per' judic' & debum suū pōict' (et.)

Et pōict' D. ut prius dic' quod pōict' D. non dedit notitiam de aut concernēd solutioū pōict' 253 l. 2 s. 6 d. in Conditione superius mentionat' secund' formam & effectum Conditionū pōict' Et hoc parat' est verificare Unde sicut prius per' judic' si pōict' D. Actionū suam pōict' vers eum here debeat, &c. Vide 1 Lut. 409.

Quer' morat' & Def. jung' in morat', and Judgment in this Case was given for the Plaintiff, for two Reasons :

1. Because the Court held, That the Defendant ought to give the Notice; and the Difficulty of the Matter consisted in this, says the Reporter, That the Defendant is bound in the Obligation *per nomen Petri Wade de London Aurifabri*, and the Condition is to pay the Money at the House of *Peter Wade in Lombard Street, London*, which might be the House of the Defendant, and it would be strange, that the Obligor should give Notice at his own House of the Payment of the Money to be made to the Obligee; but the Court would not intend that, because it was not said in the Condition, that the Money was to be paid at the House of the aforesaid, or the above bounden *Peter Wade*, and therefore they would rather intend it to be at the House of another Man, especially it not appearing that the House of the Defendant was in *Lombard-Street* : But admitting that it might be intended, that the Notice was to be given at the Defendant's

Defendant's House; yet this is no such strange Matter but that it might be true; for perhaps it might be that the Defendant in respect of his much Business, as a *Goldsmith*, could not go to his House to give Notice, but that the Plaintiff might come to the Defendant's House on the 10th Day before the 11th of *March*, in the Condition, to know if the Defendant would pay the Money upon the Day in the Condition.

2. Another Reason was, for that it could not be intended, that it was the Meaning of the Parties, that the Money should be lost for Default of Notice: But admitting that the Plaintiff ought to have given Notice; yet the Defendant's Plea was ill, because it was pleaded in *Bar*, where it ought to have been only in Abatement, according to the Case of *Lawson and Widrington*. 1 *Lev. Rep.* 85. *Raymund* 61. and 1 *Keb.* 380.

*Note*, The Case of *Lawson and Widrington* is reported to be upon a Bond conditioned to pay 50 *l.* the 10th of *January* next ensuing, on three Months Warning. The Defendant pleaded *Action' non*, because the Plaintiff did not give three Months Warning before the 10th of *January* next ensuing the Sealing of the Bond. The Plaintiff demurred, for that the Money being to be paid upon a certain Day on three Months Warning, the Defendant is to give the Warning to be ready to receive it, and that if the Plaintiff is to give the Warning, the Plea could only be in Abatement, because the Action is brought



brought before the Money due, and not in *Bar*, so that the Money should be lost, and then a Plea in Abatement beginning or concluding in *Bar* is ill, and cited *Bro. Brief. 77. 36 H. 6. 3 Cro. 202.* It is said, the Court then thought that the Plaintiff ought to give the Warning, for otherwise, if the Defendant would never give Warning, the Money should never be paid; but it being then adjourned and moved afterwards, the Court held that it should be taken, that the Obligor is to pay the Money the 10th of *January* next ensuing, giving the Plaintiff three Months Warning of it; for the Words should be taken most strongly against the Obligor, and therefore ruled Judgment for the Plaintiff *nisi Causa.* *Vide 1 Lev. Rep. 85, 66.*

The Plaintiff declares in Debt for 10 l. The Defendant prays *Oyer* of the Condition, which recites, that a Suit had been depending between the Plaintiff and Defendant, and that the Defendant had agreed to pay the Charge thereof; if therefore the Defendant should pay to the Plaintiff or *H. F.* his Attorney, all such Charges with which the Attorney should charge the Plaintiff, and discharge the Plaintiff thereof, that then, &c. — Quibus lectis & auditis idem *R.* dic' Actionem non quia dic' quod ipse *pō R.* post confectionem script' Obl' *pō & ante impetrat' brevis original' pō ipsius R.* scilicet primo die Aprilis Anno dñi Domini Regis nunc quarto supradicto apud *L.* iuxta *L.* *pō solvit pfa' R.* omnes & pñcō mis' Bar' quod & custag' decie in in Conditione *pō iuxta solvit*  
*meus*



mentionat' adtunc insolui' quibus p<sup>o</sup> H. onerasset, Anglice did charge, p<sup>o</sup> R. p<sup>o</sup> psecutione lecti' in Condition' p<sup>o</sup> mentionat' secundum formam & effectum Condition' p<sup>o</sup> Et hoc, &c. Unde, (&c.)

Repl' non.

Et p<sup>o</sup> R. dic' precludi non quia dic' quod p<sup>o</sup> H. J. post confectionem script' Obl' p<sup>o</sup> & ante diem impetrat' brevis original' ipsius R. p<sup>o</sup> scilicet 10 die Martii Anno Regni dicti Domini Regis nunc 4 supradicto apud B. juxta L. p<sup>o</sup> onerabit, Anglice did charge, p<sup>o</sup> stat R. cum 4 l. 16 s. p<sup>o</sup> prosecutione lecte p<sup>o</sup> supius menc' Unde p<sup>o</sup> R. adtunc & ibm fuit notic' quodque ipse idem R<sup>o</sup> non solvit eidem R<sup>o</sup> vel eidem H. p<sup>o</sup> dict 4 l. & 16 s. nec deinde exonerabit p<sup>o</sup> dict R<sup>o</sup> secundum formam & effectum Condition' p<sup>o</sup> dict Et hoc, (&c.) Unde per' judic' & dehum, &c. Et p<sup>o</sup> dict R<sup>o</sup> prestando dic' quod p<sup>o</sup> H. J. non onerabit p<sup>o</sup> stat R<sup>o</sup> cum p<sup>o</sup> dict 4 l. 16 s. pro prosecutione lecte p<sup>o</sup> dict in Conditione mentionat' put' idem R<sup>o</sup> supius alleg' pro p<sup>o</sup> lito idem R<sup>o</sup> dic' quod H. J. non delibabit eidem R<sup>o</sup> villam mis & custag' p<sup>o</sup> dict' sub ejus manu secundum formam Statuti in eo casu edit' & p<sup>o</sup> bis'. Et hoc, &c. Unde, &c. Quer' Demurr' Et des. jung' in mo<sup>o</sup>ac. Vide 1 Lut. 419, &c.

In this Case the Court was of Opinion, That the *Bar* was not good, being too general, for he ought to have shewn that the Attorney charged so much, and no more, and that he had paid it; and it was agreed, that when a Matter tends to a great Prolixity,

that to avoid that, a more concise Manner of pleading ought to be admitted, but that the Certainty of pleading in this Case did not tend to any such Thing, and for Authorities to prove this Diversity cited 3 Cro. 253. *Atton's Case*, 3 Cro. 749. *Mint and Bethil's Case*, 1 Rolle's Rep. 382. *Whites's Case*, 9 E. 4. 14, & 15. 16 H. 7. 4. a. 3 Cro. 359. *Halsey and Carpenter's Case*, Latch. 16. *Wilkinson's Case*, 4 H. 7. 12, &c.

Then it was objected that the Replication was ill, for it was that the Defendant had not paid the Charges, and also, that he had not saved the Plaintiff harmless; but the Court held it single enough; for by the Intent of the Condition Payment is a Discharge, and if it was double, the Defendant could not take Advantage but upon a Demurrer for that: Three of the Justices held, that a good Breach was assigned by the Replication as it ought to be, the Condition being to do a collateral Act, and not for Payment of the Money, Parcel of the Bond: The other Justice doubted, and that it was too general, and also, for that the Condition is to pay all the Costs, &c. which were unpaid at the Time of making of the Bond, which was the 5th March, 4 Jac. 2. And the Plaintiff by his Replication says, That the 10th of the said Month the Attorney charged him with 4 l. 16 s. and the Defendant had not paid them; but 'tis not averred, that so much Charges was unpaid at the Time of making the Bond.

(Part IV.)

D d

They

They all agreed, That the Rejoinder was a manifest Departure from the Bar, by which he says that he paid all the Charges, and in the Rejoinder he would excuse the Non-payment, by reason that a Bill of Charges was not delivered him, which was also impertinent, for neither the Condition nor the Nature of the Matter required any such Thing. And the Plaintiff had Judgment. *Vide 1 Lut.* 422.

*Jf.* Debt upon Bond against *T. G.* for Three hundred Pounds *dat.* 23 Aug. 1693. The Condition reciting, That whereas *Joseph Kingdon* was indebted to the Plaintiff in Three hundred and Ten Pounds and more, and that *Kingdon* had requested the Plaintiff to accept of Ten Shillings *per* Pound, and also reciting, that the Plaintiff at the Request of the Defendant by one *Mottram* his Co-obligor, had agreed to accept the said Ten Shillings *per* Pound. If therefore the said *J. M.* and *T. G.* should pay to the Plaintiff at certain Days Ten Shillings for every Pound, which the Plaintiff by sufficient Proof should make appear to be then due to him from the said *Kingdon*, then the Bond to be void. *Bar*, That the Plaintiff had not made appear that any Sum was due to him, *Ec. Repl'*, That before the Days of Payment in the Condition, the Plaintiff and *Kingdon* accounted, and that *K.* was found in Arrear, and confessed himself to be indebted in Three hundred and Ten Pounds, and Notice thereof given to the Defendant. Breach, That the Defendant and the said *Mottram* had not paid



paid to the Plaintiff Seventy-seven Pounds Ten Shillings, being one Moiety, on the 25th of *Novemb.* in the Condition mentioned. Defendant demurs.

1. And upon the Argument it was objected by Serjeant *Wright*, then the King's Serjeant, That Proof in this Case ought to be Proof upon Trial by a Jury, which is the only Proof of which the Law takes Notice, and cited to *E. 4. 11. Cro. Eliz. 305. 2 Cro. 232, 381 & 488. 1 Sid. 57. Hob. 92. 2. Keb. 239.* And as to the Case of *Butcher and Vales*, 1 *Sid.* 113. he said that was by reason that there was other Proof appointed by the Parties.

To this it was answered, That as this Case is, the Parties could not intend a judicial Proof, or that the Proof is to precede the first Payment of the Money, for the Bond was dated the 23 of *Aug.* 1693. and the first Payment to be made the 25th of *November* following, that there was only a Month and two Days in the Term-Time for the doing thereof, and that Proof could not be made in so little Time, and by Consequence any other Proof of Necessity is to be intended.

2. It was again objected, that the Confession of *Kingdon* was not sufficient, and also, that he was not *fide dignus*.

To which it was answered, That admitting there had been sufficient Time for Proof before bringing the Action, that could not be against the Defendant, for the Plaintiff had no Cause of Action against him, but only upon the Bond, and he could not have an Action upon that before Proof; and if it should

be against *Kingdon*, his Confession of the Action, or Demurring to the Declaration without good Cause, had been sufficient Evidence, as in *Crookshay* and *Woodward's Case*, *Hob.* 217. And if so, there could be no Reason, that his Confession upon Account could not be good Evidence. And as to *Kingdon's* Competency, it was agreed as by the Condition, that Money was due to the Plaintiff by *K.* but the *quantum* of the Debt was the sole Matter in Controversy, and no Person more proper to ascertain that than *Kingdon*, upon Account with the Plaintiff, nor was it material to *K.* whether it was more or less, for the Defendant was bound to pay it, and it was to be presumed that *K.* would do no Injury to the Defendant, who was so kind as to engage to satisfy his Debt, and that the Case of *Cockain* and *Goodlage*, 1 *Bul.* 40. is an Authority in the Point, that the Proof is good, and the whole Court being for the Plaintiff, Judgment was given accordingly. *Vide* 1 *Lut.* 663.

¶ Debt sur Obl', Bar per Acquittance General & Repl non est factum. Bro. Red. 174, 186. Bro. Met. 185. Pl. Gen. 248.

¶ Ad respo Debi def. placitat' Acquietanc' special' sub sigillo quer', Et quer' Demurres inde. Winch. Ent. 306.

¶ Debt de 200 l. per Obl', Bar per Acquittance de 100 l. parcell', Repl' quod fecit Acquietanc' de parte al' Debi per Obl' Rej

Ref. quod fuit pro parte Debi petiti. Placit<sup>o</sup>  
Gen. 5.

¶ Debt sur Bill<sup>o</sup>, Bar p Acquietanc<sup>em</sup>  
menconand quod billa non potuit inveniri,  
cum Aberment quod est eadem billa, Repl<sup>o</sup>  
per non est factum. Bro. Red. 201.

*Bar per Defeazance. Vide antea Bar sur Re-*  
*cognizance.*

¶ **A**ction non, &c. Quia dic<sup>o</sup> quod post  
iudicium p<sup>o</sup>dict in forma p<sup>o</sup>dict red-  
dit<sup>o</sup> ante exhibicōem bille p<sup>o</sup>dict scilicet (die,  
&c. Anno, &c.) apud Westm<sup>o</sup> in Com<sup>o</sup> p<sup>o</sup>dict  
Agreat<sup>o</sup> & concordat<sup>o</sup> fuit (p quoddam script<sup>o</sup>  
Indentat<sup>o</sup> int<sup>o</sup> p<sup>o</sup>dict C. p nomen C. C. de (&c.)  
ex una parte & quendam A. C. & p<sup>o</sup>dict T.  
C. p nomina (&c.) ex altera parte, cuius qui-  
dem script<sup>o</sup> alteram partem sigillo ipsius C. si-  
gillat<sup>o</sup> idem T. hic in Cur<sup>o</sup> profert, cuius dat<sup>o</sup>  
est die & Anno supradictis) quod p<sup>o</sup>dict C. in  
Iudicio p<sup>o</sup>dict relaxaret & acquietaret p<sup>o</sup>dict A.  
& T. (as in the Defeazance) Et hoc (&c.)  
Unde (&c.) Vide Thomps. Ent. 434. Et Vide  
simile placitum 2 Mod. Intr. 231.

Aliter secundum Rast. Ent. 184.

¶ **E**t p<sup>o</sup>dict A. p S. Attorn<sup>o</sup> suum vend<sup>o</sup>, By Inden-  
&c. Et dic<sup>o</sup> quod p<sup>o</sup>dict T. Action non, ture.

D d 3

Quia



Quia die quod p̄dict T. die & Anno supra dict & post tempus confectionis script' p̄d apud S. in Com̄ E. per quendam Indentur suam cuius alteram partem sigillo ipsius T. signat' idem A. hic in Cur' p̄fert cuius dat' est eisdem die & Anno testantem quod cum idem A. per Obligac' suam videlicet die' script' obligat' Obligat' fuisset p̄fat' C. in p̄dict 4 l. ad p̄fat' Terminum solvens, voluit tamen & concessit quod si, &c. (ut in Indentur.)

Aliter a payer a divers jours, Et quod solvit.

ff. **E**t p̄d C. in prop' person' sua veni, &c. Et die quod p̄dict J. Action non Quia die quod p̄dict J. post confectionem script' p̄dict apud B. p quoddam scriptum suū indentat' int' ipsum & p̄fat J. & quendam M. fac' cuius alteram partem sigillo ipsius J. signat' idem G. hic in Cur' p̄fert cuius dat' est quinto die R. Ad (&c.) recitans p idem scriptum quod cum idem G. ac p̄dict M. tenerent' ac per p̄dict script' Obl' obligarent' p̄fat J. in 14 l. 15 s. sterlingorū solvens eidem J. heres vel Exec' suis aut suo certo Attozū ad certum diem in d̄co script' Obl' content', p̄dict tamen J. voluit & concessit pro se heres & Execut' suis quod si p̄d G. & M. vel Executor' sui solverent seu solvi facerent aut unus eorum solveret seu solvi faceret eide J. heres vel Executor' suis aut suo certo Attozū in Festo R. tunc

Pr.

per futur 40 s. Et in Festo P. tunc pro-  
 sequend 40 s. Et sic de quarterio in quarteris-  
 m & de Anno in Ann ad Fest' p'dict ad  
 quodlibet Festum 40 s. quousq; p'dict sum-  
 ma 14 l. & 15 s. foret solut', tunc p'dict  
 Obl' pro nullo heret' Et si defect' foret' in  
 aliqua solucone p'dict ad aliquod Festum sive  
 Term' p'dict' in parte vel in toto tunc p'dict  
 Obl' in omni suo roboze remaneret & vir-  
 ute Et idem G. dic' quod ipse & p'dict W.  
 solver' p'fat J. apud p'dict Will' de B. in Fe-  
 sto Pur' h't M. (Ad, &c.) 40 s. & in Festo  
 P. tunc per' sequend 40 s. secund' formam &  
 effectum script' Indental' p'dict Et hoc parat'  
 & verificare, &c. Unde per' Judic' & p'dict  
 Action, &c.

Et p'dict J. non cognoscens quod p'dict G. <sup>Repl' and</sup>  
 W. solver' aut eorum alter solvit eidem <sup>Issue.</sup>  
 40 s. ad p'dict' Festum P. Ad (&c.) quos  
 ad idem Festum solvisse debuer', dic' quod  
 se precludi non, quia dic' quod p'dict G. &  
 W. non solver' nec eorum alter solvit eidem  
 40 s. in p'dict Festo Pur' h't M. Ad, &c.  
 p'p'dicto quos ei in eodem Festo solvisse des-  
 ier' secund' formam & effectum script' Inden-  
 tal' p'dict put p'dict G. supius allegabit Et  
 hoc per' quod inquirat' per P'riam Et p'dict  
 similiter, &c. Ideo xii, &c. Vide Rast.  
 nt. 185. b. vide und' 183, 184. pro al'  
 Bar p' Defeazance. Et vide Winch. 207, 237

Note, It is observed in 2 Saund. Repl. 478.  
 8. That in Debt upon a Bond dated April  
 Anno 16 Car. 2. The Defendant plead-  
 ed

ed, That after the making of the Bond, viz. the same Day and Year, the Plaintiff made him a Defeasance, and thereby promised, &c. That if he did not before the last of June produce Witnesses to prove, that the Money in the Condition mentioned was a true Debt, and that the Defendant before the making the Bond had promised to pay it, Then the Bond should be void; and avers that the Plaintiff did not produce Witnesses to make such Proof, &c. To which Plea the Plaintiff demurred, and Judgment *nisi* was given for the Plaintiff by Justice Twisden; Rainsford and Morton *tacentibus in absentia Kelynge Capital' Justic'* upon this single Point, That the Defeazance being pleaded to be made after the Bond was made, could not avoid the Bond, but that if he would have avoided the Bond, it ought to have been made at the same, or *eodem instanti* with the Bond: Hereupon the Defendant's Counsel prayed a further Day. *Et sur ceo* (says the Reporter) *in furore il done Judgment absolute sans ascun jour done ouster. Et hoc minus consulte ut mihi videtur* (says he) for the Law is clear, That a Bond, Judgment or Statute may be defeated by a Defeazance made afterwards, as is the Common and usual Practice, *Co. Lit.* 207. (*vide* 237. a.) *Cro. Eliz.* 755. for that a Defeazance is only a Conditional Release. And the Difference is between a Thing vested and a Thing executory; as in a Feoffment of Lands, the Condition ought to be contained in the same Charter of Feoffment, or in another Deed sealed at the same Time, or otherwise the Condition is void, for that in the Feoff-



Feoffment the Estate of the Land is vested and executed in the Feoffee: But a Bond or Judgement is only executory, and may be released or defeated at any Time by Deed ensealed, although it was not sealed at the same Time with the Bond or Judgment. *Et ceo est clere Ley sans ascun doubt ou ambiguity, comment que sur un sodeine le Court erroneusement misprist ceo & done Judgment come devant,* says, the Reporter. Yet Q. of a Defeazance made at a Day after an Obligation with a Condition; for a Condition seems to be a Defeazance of it self.

As to these Pleas of Conditions performed,

1. By Payment of the Money.
2. By Delivery of the Corn or Goods.
3. By Concord and Acceptance of other Things in Satisfaction.
4. By Tender.
5. By Release or Acquittance.
6. By Defeazance.

It may be further observed,

1. That Payment to a Scrivener is sufficient, especially if he have the Bond in his Custody.
- 3 *Keb.* 471.

So if Judgment be given in Debt, and the Money is paid to the Attorney of the Plaintiff; though the Attorney miscarry with the Money, yet the Payment is good; but if a Scrivener is employed generally to put Money to Use for a Year, and the Money is paid to the Scrivener, who breaks, this Payment shall not excuse

excuse the Party ; but if he receive it by special Command, it is a good Cause of Equity, *Lit. p. 54. Cro. Eliz. 313. Lit. Rep. 156, 173.* So Payment to his Assigns is good. 2 *Sid. 41.*

If the Bond be to pay Money to two actually, yet it can be but paid to one at the same Time. 2 *Sid. 41.*

If upon a Condition of a Bond to pay Money, my Servant by my Command tenders this to the Obligee, 'tis sufficient. 2 *H. 6. 3. b.*

If a Defendant owing Money upon a Bond, and also for Wares sold, tender the Money upon the Bond at the Day of Payment, and the Plaintiff accepts it, and says it shall be for the Goods, and so crosses his Book, the Payment shall be for the Bond, *secundum mentem dantis non accipientis. Styl. p. 239. Cro. Mich. 29, 30. Eliz. Anonymus.*

So if Debt is due by Bond, and another to the same Debtee of an equal Sum, and the Debtor pay one Sum generally, this shall be intended Payment upon the Bond. 2 *Brownl. 107, 108.*

Upon Payment at several Days no Action lies before the last Day be past, unless with a special Exception, as is now usually made in Bonds for several Payments.

If the Condition be to pay Money, Satisfaction may be made by any other collateral Thing ; but 'tis otherwise where a Man is bound to do any collateral Act, as to make a Feoffment, or Statute, or render a true Account, &c. 9 *Rep. Peytoe's Case. 11 H. 7. 21. Cro. Eliz. 474.*

## 2. Concord and Acceptance of other Things.

And if a Man be bound in 200 Quarters of Corn, on Condition to pay Twenty Pounds ; a Ring, or Horse, or other Thing collateral, is Satisfaction. 9 Rep. 79. But if the Condition was to pay Corn, or for the Delivery of a Horse, here Payment of Money or other collateral Thing is not Satisfaction, being no Parcel of the Sum contained in the Obligation. *Ibid.* & Cro. M. 33. & 54. Co. Lit. 212. b. Cro. Eliz. 253.

The Defendant pleads, That the Plaintiff before the Day accepted a lesser Sum in full Satisfaction of a greater, it is a good Plea ; but then he must plead he paid that lesser Sum in full Satisfaction, and that the Plaintiff so received it. 5 Rep. 117. Cro. Mich. 35 & 36 Eliz.

If the Obligor pay a lesser Sum either before the Day, or another Place than is limited by the Condition, and the Obligee receive it, this is a good Satisfaction. *Ibid.*

If a Condition be to pay a lesser Sum at a Day, and the Obligee agree he shall pay an Horse or other Thing in Satisfaction, yet if he refuse this at the Day, the Obligor ought to pay that lesser Sum at the Day. 1 Roll's Abr. 456. But Acceptance before the Day is a good Discharge. Cro. Eliz. 46.

Concord is no Plea without Satisfaction. Cro. M. 32 & 33 Eliz.

Accept



Acceptance of another Bond is no good Plea. So of a Statute, 1 *Rolle's Rep.* 266. *Cro. Car.* 85. 3 *Bul.* 148. For one Chose in Action cannot be given in Satisfaction of another, unless it were payable at a Day before the other Debt. 2 *Keb.* 804. 1 *Brownl.* 47, 339. *Lit.* 58. 5 *Rep.* 44. No, though a Stranger give the Bond, 1 *Brownl.* 71. 6 *Rep.* 44.

So Entring into a new Obligation with Surety is no Discharge of the First, for it is but a Thing in Action and not present Satisfaction, 1 *Rolle's* 470. So Entring into an Obligation is no Satisfaction of the Statute. *Ibid.* 11 *H.* 4. 23 b.

If a Condition be to pay ten Pounds at a Day, but is not paid; and if after the Day the Obligee accepts of a Statute Staple in full Satisfaction of the Bond, yet the Bond is in Force and the Obligee has Election to sue which he will. 1 *Rolle's Abr.* 470. 6 *Co.* 44.

Upon a Condition to pay 100 Marks at a Day, and at the Day the Obligor and Obligee account together at another Place, and for that the Obligee owes to the Obligor 20 *l.* by another Contract, the Obligee allows the 20 *l.* in the Payment of the 100 Marks: This is said to be a good Satisfaction of the Condition, because it is Payment by way of Retainer. 1 *Rolle's Abr.* 471, 475.

The Condition was to pay Twenty Pounds at a Day, and a Stranger surrenders a Copyhold to the Use of the Obligee in Satisfaction of the Twenty Pounds which the Obligee accepted; this is said to be a good Satisfaction  
and

and Discharge of the Obligation, by 1 Rolle 471. but by Cro. Eliz. 541. it is no Plea; for J. S. is a meer Stranger to the Condition, and Satisfaction by him not good.

Payment of the Money to the Plaintiff's Bailiff by the Plaintiff's Commandment is a good Plea, without averring that it came to his Use: Such an Averment makes the Plea double. 22 Ed. 4. 25. a. *Vide postea*.

If Money due upon a Bond be paid before the Day, that is a good Discharge, for it is a Duty presently, 9 H. 7. 21. a. for Payment before the Day is Payment at the Day. 1 Leon. 311. 1 And. pl. 233.

The Condition for Payment being made an Impossibility, as on the 31st of September, it shall be paid presently, Latch. 178. Cro. Car. 78. Jones 140. If it be to be paid or delivered on the 29th of February following, and that Month hath but 28 Days, *per Cur'*, he is not bound to pay, &c. till the 29th Day in the next Leap-Year. 1 Leon. 101.

If a Man have two Days of Payment made to plead, and he relied upon one of them in his Pleading, and Issue joined upon that, and found against him, upon moving to arrest Judgment, he was said to be barred. Style 93.

The Condition was to pay at the Feast of our Lady, not limiting whether Conception, Nativity or Annunciation; *Per Cur'*, it shall be intended such a Lady-Day which should next happen, and follow the Date of the Bond. 3 Leon. 7. See 1 Rolle's Abr. 444.

The

The Bond was dated in *March*, and the Condition was for Payment *super vicesimum octavum diem Martii prox' sequentem*; *Per Cur'*, it shall be understood of the current Month; perhaps *Aliter*, had it been *Sequentis*, cited in 1 *Mod. Rep.* 112. *vide* 2 *Rolle's Abr.* 255. *Croke Jac'* 646.

In Debt on Bond, Payment of the Money to *J. S.* by Commandment of the Plaintiff, is no Plea without shewing that the Plaintiff was indebted to him, 27. *H. 6. 5. b.*

### *No Time of Payment limited.*

If in the Condition of a Bond no Time is limited for Payment of the Money, it ought to be paid presently, that is, in a convenient Time: So in other Conditions which concern the doing of transitory Acts, as Delivery of Charters, &c. but otherwise of local Acts. 6 *Rep.* 30. *b. Co. Lit.* 208. *Poph.* 198. *Cro. Eliz.* 798. 1 *Rolle's Abr.* 437.

If a Condition be to make an Obligation to the Obligee by the Advice of *J. S.* of Forty Pounds immediately, yet he shall have reasonable Time to do this. 18 *Edw.* 4. 21.

And where by the Condition a Thing is to be performed upon Demand, yet he shall have reasonable Time to perform this after Demand. 15 *E.* 4. 30.

If the Condition be to do a Thing upon Request, the Plaintiff must make Request to the



the Person, and not by Proclamation, giving Notice of the Request. 1 Rolle's Abr. 443.

*Place of Payment limited.*

If a Place of Payment be limited by the Condition, he is not bound to pay this in any other Place. 17 Ed. 3. 16. 1. Rolle's Abr. 445. So if a Place be limited for the Performance of a Thing, the other is not bound to receive this in another Place. Rolle's Abr. 445.

But if a Condition be to pay 10 l. at D. and the Obligee accepts this at another Place, it is a good Performance. Id. 456.

*No Place limited.*

If no Place be limited in the Condition for Payment of the Money, he must tender the Money to the Person of the Obligee; but if the Condition be to deliver Twenty Quarters of Wheat, or Twenty Load of Timber, &c. the Obligor before the Day must go to the Obligee, and know where he will appoint to receive it. And if the Condition be to make a Feoffment, it is sufficient to tender it upon the Land, for there the Livery must pass. Co. Lit. 210. And if the Obligee be out of England, he is not bound to seek him. Ibid.

Yet

Yet (as is before observed) where no Place was named in the Bond for Payment of the Money, the Defendant pleaded the Plaintiff was beyond Sea at the Day of Payment, and said not *uncore prift*; and *per Cur'* it was a good Cause of Demurrer. *Siderfin. p. 30. Hill. 12. & 13 Car. 2. B. R. Hobson and Rudge.*

It is Error upon a Judgment in an Inferior Court, if it appear by the Declaration that the Money was to be paid out of the Jurisdiction of the Court. *Style 225. Vide 1 Keb. 378.*

A Condition to pay Money at several Days, Defendant pleads particular Payments according to the Condition: The Plaintiff replies, he did not pay at such a Day certain, *Et hoc parat' est verificare*, ill Conclusion, but it is not Substance, and so must be specially demurred to, for it ought to be, *Et de hoc ponit se super Patriam*; but on Performance generally pleaded, the Plaintiff may reply with a particular Breach, *Et hoc paratus, &c.* and leave the Issue to the Defendant. *1 Keb. 759, 766. Charlton and Fine.*

#### 4. Tender.

Tender at the Day and Place, of the Money, and the Plaintiff refused it, and the Money brought into Court; the Plaintiff joins Issue, That there was no Tender and Refusal. Verdict for the Defendant. The Plaintiff hath lost his Money, for it is a Refusal  
on

on Record, and the Defendant must have his Money out of Court. *Style p. 388. M. 1653. Benskin and Herrick.*

If the Obligor tender the Money at the Day and Place, and the Obligee refuseth it, if in Debt upon the said Bond, the Defendant pleads Tender and Refusal, he must also plead he is yet ready to pay it, and tender the same in Court: *Aliter* if it were to be paid to a Stranger. But if one is bound in Two hundred Quarters of Wheat, to deliver One hundred Quarters, if the Obligor tender at the Day a Hundred Quarters, he shall not plead *uncore prist*, for they are *bona peritura*. But the Sum of Money is not lost by Tender and Refusal, because it is a Duty and Part of the Obligation; and where the Condition is collateral to the Bond (that is, not Parcel of it) there Tender and Refusal is a perpetual Bar, and he shall not be driven to plead *uncore prist*; as when a Man is bound in a Hundred Pounds to deliver Corn or Timber, to perform an Award, or bound by Award to pay 20*l.* &c. *Co. Litt. 207. 1 Brownl. 61. Dyer. 1 Eliz. 167. 9 Rep. 97.*

If Money be tendered, and none ready to receive it, and after he to whom the Money is payable demands the Money, and the other refuseth, an Action is brought and Tender pleaded; yet the Defendant shall pay Damages from the Time that the Money was demanded. *1 Brownl. 71.*

After an Imparance in Debt upon Bond, the Defendant shall be received to plead he  
(Part IV.) E e was



was always ready to pay. *Winch. 4. Doct. Plac. 388, 289. Vide Cro. Jac. 617.*

Tender after Impar lance, and none ready to receive it, and that he is yet ready without pleading *uncore prist*, it seems he had forfeited his Bond.

Defendant, after Impar lance, pleads he tendered at the Day and Place, and none there to receive it, and that he is now ready, but saith not *touts temps prist*, he hath excused himself of the Forfeiture, and no Estoppel shall be by the Impar lance to plead he is now ready. *Doct. Plac. 288, &c.*

The Defendant pleads Tender at the Day, and *touts temps prist*: The Plaintiff received the Principal Sum in Court, and Judgment to acquit the Defendant of the Sum received. The Plaintiff, to have Damages, alledged a Demand of the Money from the Defendant, and Defendant demurred, and it was adjudged against the Plaintiff: For if the Plaintiff would have Damages he ought not to receive the Money but suffer it to remain in Court; for after Judgment, *Quod eat inde sine die*, no Issue can be taken. *Cro. Jac. 126. Harrold and Clothworthy.*

In *Touchstone of Precedents* 248. it is said, That if a Man be bound to pay 100 l. to another on such a Day, and he tender the same at the Day, he is not bound to pay the same on any other Day unless the Obligee will give him an Acquittance or Release.

## 5. Release and Acquittance.

By a Release of all Actions by the Obligee before the Day of Payment, he shall be barred of his Duty for ever; for it is *Debitum in presenti*, &c. and the Right of the Action is in him, so by a Release of all Demands. *Co. Lit.* 291, 292.

Two are jointly and severally bound in an Obligation, if the Obligee releaseth to one of them, both are discharged. *Co. Lit.* 132. But a Release to an Executor of a Joint-Obligor is void. *Cro. Car.* 551. 1 *Keb.* 936.

Two are bound, Obligee releaseth to one, provided that the other shall not take Benefit of this Release, it is a void Proviso. *Lit. Rep.* 191.

J. S. makes a Bond dated and delivered on the First of May, and on the First of June following the Obligee makes a Release to the Obligor, dated the First of March, and delivered the First of June, by which he releaseth all Actions *ab origine Mundi*, until the Date of the Release, *per tous* Justices, the Obligation is not released. *Cro. Eliz.* p. 14.

The Defendant to a Bond dated 24 Junii, *Car.* pleads that the Plaintiff 22 Feb. 10. *Car.* released to him all Actions and Demands which he had, &c. to the Day of the Date thereof. The Plaintiff demands Oyer of the Release, which was a Release of all Actions unto the 14th of January, before the Date

## Bar al Debt sur Obl'.

of the Release; For this Misprision the Plea was adjudged ill. *Cro. Car.* 426.

Release of an Obligation bearing Date the same Day, and the Release is of all, &c. *usque ad diem datus*, this doth not discharge the Obligation. 2 *Roll.* 255.

An Obligation bears Date the First of *May*, and is delivered twenty Days after, and the Obligee makes a Release the second Day of *May*, and delivers this the same second Day. This Release is no *Bar* of the Obligation; but in this Case if the Obligee will bring his Action and Count on a Bond bearing date the First of *May*, and doth not say that this was *primo deliberat'* the twentieth Day, the Defendant shall bar him by the Release. 5 *H.* 7. 27. a.

Debt upon a Bond not forfeited, the Day of Payment being not then come. The Defendant pleads a Release, and found against him: In Arrest of Judgment it was adjudged for the Plaintiff, the Defendant not having taken such Advantage as he might, but had waved it, and pleaded a collateral Matter which was found against him. *Cro. Eliz.* 68.

The Defendant pleaded, That he was bound in the Bond *Simul cum* R. G. to whom the Plaintiff had released all Actions and Demands the said First Day of *May*, (which was the Date of the Obligation) The Plaintiff by Replication shewed that after the Obligation sealed by R. G. he released to R. G. and that afterward the same Day the Defendant sealed the Bond. This Release *per Cur'*, doth not discharge the De



Defendant. *Cro. Eliz.* 161. *Mannings and Townsend.*

By Exception of a Bond in a Release, all Actions and Suits concerning it are also excepted. *Cro. Eliz.* 726.

A Covenant by Indenture that the Obligee will not at all sue the Bond, may amount to a Release. *Cro. Eliz.* 352. 1 *Andersf.* 307.

And if a Defendant pleads that the Plaintiff by Indenture shewed, covenanted, that if he paid 100 l. at, &c. then the Obligation should be void, and avers he paid it: It is a good Plea in *Bar*, and he shall not be put to his Writ of Covenant, by Circuity of Action. *Cro. Eliz.* 623.

Payment of Parcel hanging the Writ, is a Acquittance, good Plea to the Writ, 5 *H.* 7. 41. An Acquittance of the Receipt of Part, hanging the Writ, goes to all the Writ; and it is noted, that where Payment is not a Plea in *Bar*, Receipt pending the Writ, is no Plea to the Writ. *Doct. pl.* 168.

The Defendant pleads Acquittance for Parcel; if the Plaintiff acknowledge his own Acquittance, he abates the whole Writ; *per Cockaine*, the Plaintiff shall recover all that the Defendant acknowledged, and as to what he had received, the Plaintiff is to be amerced. 3 *H.* 6. 48.

The Defendant pleads that after the Day of the Writ purchased (*viz.* such a Day) he paid to the Plaintiff 60 l. Parcel thereof, which he received, and prays Judgment of the Writ; Plaintiff demurs specially, because he shewed

## Bar al Debt sur Obl.

not any Acquittance or Release testifying it? *Judic' pro Quer'. Cro. Eliz. 884.*

In Debt on a single Obligation, Payment without Acquittance is no Plea; otherwise in Debt on Bond with a Condition. 28 H. 8. *Dyer* 25 b. 33 H. 8. *Dyer* 50. b. 51. a. 15 *Edw.* 4. 6. a.

Payment with Acquittance pleaded in an Action of Debt on a Bond is not double, because the Payment only is issuable, and the Acquittance is but Evidence. 1 H. 7. 15. b.

If the Plaintiff by Deed had confessed himself to be satisfied of the Debt, though he had received nothing, yet this is a good Bar. 30 H. 6. Tit. Bar 37. 5 Rep. 117. *Pinnel's Case.*

In *Touchstone of Precedents* 248. it is said, if Money be due on Recognizance, and the Conusor pay Part, and the Conusee give him a Release, if the Release mentions not the Recognizance, it shall release so much as is paid only, for the Recognizance is entire, and being destroyed in part, is destroyed in the whole.

### 6. Defeazance, &c.

If a Man make a single Bond, or acknowledge a Statute or Recognizance, and afterwards make Defeazance to pay a lesser Sum at a Day; if the Obligor or Conusor tender it at the Day, and the Obligee or Conusee refuse it, he shall never have any Remedy by Law to recover it, because no Parcel of the Sum

con-

contained in the Obligation or Statute, the De-  
feazance being made at a Time after. *Co. Lit.*  
207. *Vide More, N. 104.*

*Vide antea Bar per Defeazance.*

Bar al Obl' sur Counterbond.

**A.** **C**onditio ad indempn' conserband' Quer'  
a script' Obl' fact' Regine p vera exe-  
cutione Offic' Feodarii. Def. plede le pri-  
mer Obl' al Roigne, Et quod pformabit oia  
in Conditioe ex parte sua pformand', Et sic  
non dampnificat', Quer' demurr'. *Vide Winch.*  
*Ent. 327.*

**A.** Conditio quod J. pformaret Articulos int'  
ptid' & un' H. fact', Et quod Def. indempn'  
conserbaret quer' ab Articulis ill'. Bar quod  
Articuli fact' fuer' p solucone denar' p J. al  
H. quos J. solvit, Et sic quer' non est damp-  
nificat'. Quer' demurr'. *Winch. Ent. 187.*

Quod Def. solvit denar' ad diem & sic indempn'  
conseruavit quer'.

**I.** **Q**uando, &c. Et per' auditum scripti p-  
dict' & ei legitur, &c. per' etiam au-  
ditum. Conditionis ejusdem scripti Et ei legi-  
tur in hec verba, The Condition (&c.)  
Quibus lectis & auditis idem G. dic' quod p-  
dict' J. (Actionem non) quia dicit quod ipse sol-  
uit p'fat' J. 15 l. 8 s. & 4 d. sup' p'dict' undecim  
Ee 4 muna



## Bar al Debt sur Obl.

num diem Febr' quos ipse & p̄dict' J. & J. W. seu eorū aliquis eisdem J. W. super eundem diem solvisse debuer' secundū formam & effectū Indorsamenti ejusdem recitat' script' Obl' videlicet apud L. in Paroch S. M. B. in Warda de B. in p̄dict' tunc domo manōnal' p̄dict' J. W. ibidem, Et sic idem G. dic' quod ipse ratione solutionis p̄dict' 52 l. & 4 d. per ipsum G. p̄fat' J. W. sup' p̄dict' undecimū diem Febr' ut p̄fertur solui' acquiescavit & exōnabit p̄dict' J. Hered' Greco & Admō suos de & ab p̄dict' recitat' script' Obl' & omnibus summa & summis Pecunie in eadem Conditione ejusdem menōnat' & content' secundum formam & effectum Indorsamenti p̄dict' & hoc (&c.) Unde (&c.)

Precludi non, Quia dic' quod p̄dict' G. non solvit p̄fat' J. W. p̄dict' 52 l. & 4 d. sup' p̄dict' undecimū diem Febr' in Indorsamenti p̄dict' recitat' script' Obl' supius menō quos p̄dict' G. ac idem J. & p̄dict' J. W. seu eorum aliquis eidem J. W. sup' eundem diem solvisse debuit secundum formam & effectum ejusdem recitat' script' Obl' put' p̄dict' G. supius allegavit Et hoc per' quod &c. Vide Thomp. Ent. 184.

Aliter secundum Brownl. Rediviv. 193.

A. **O**mnibus lectis & auditis (Nōtion non) Quia dic' quod ipse solvit p̄fat' T. C. p̄dict' 50 l. sup' p̄dict' decimū diem Aug' quas idem Def. & p̄dict' R. aut alter eorum eidem

eidem T. in & sup eundem diem solville des-  
buer' aut debuit Per quod idem Def. acquies-  
tabit exonerabit & indemnificabit pō R. ab om-  
nibus Actōibus Sect' Querel' dampnū & mole-  
stationibus quibuscunque que aliquo modo eveni-  
rōne scripi' Obl' pōict p̄fat T. in forma  
pō fact' put idem F. & p̄fat R. aut alter eorū  
pō R. acquietare exonerare & indemnificare des-  
buer' aut alter eorum debuit secundum formam  
& effectum Conditionis ill' Et hoc, &c. Unde, &c.

Et pōict R. (p̄cludi non) Quia protestando  
quod pōict F. non acquietabit exonerabit &  
indemnificabit pōict R. ab omnibus Actiōi-  
bus Sect' Querel' dampnū & molestatiōibus qui-  
buscunque que ullo modo evenirent rōne scrip-  
ti Obl' pōict put pōict F. supius allegabit p  
p̄fatio dicit quod pōict T. non solvit p̄fat  
T. C. pōict 50 l. sup pōict decimum diem  
Aug' quas idem F. aut pōict R. sive alter  
eorum eidem T. in & sup eund' diem solvil-  
se debuer' aut alter eorum debuit secundum  
formam & effectum Condition' ill' put pōict  
F. supius allegabit Et hoc parat' est p̄ficare,  
Unde per' iudic' & debitum suū pōict unacum  
dampnis suis occōne detentiōis debi ill' sibi  
adjudicari, &c.

Et pōict F. ut prius dicit quod ipse solvit  
p̄fat T. pōict 50 l. super pōict decimum di-  
em Aug' quas idem F. & pōict R. aut alter  
eorum eidem T. in & super pōict diem solville  
debuer' aut unū eorum debuit secundum for-  
mam & effectū Condition' pōict' Et de hoc  
pōid se sup p̄ziam, &c.

Aliter.

Aliter.

**H.** **Q**uibus lectis & auditis (Action non) Quia die quod solvit p<sup>r</sup>dict, &c. p<sup>r</sup>dict 31 l. 10 s. sup p<sup>r</sup>dict duodecim diem M. in Condition p<sup>r</sup>dict supius spec quos ei sup eund diem solville debuit secundum formam & effectum Condition p<sup>r</sup>dict videt in Aula Holm<sup>i</sup> nuncupat' Cliffords Inn in London p<sup>r</sup>dict Et item R. ulterius die quod exonerabit p<sup>r</sup>dict R. p<sup>r</sup>dict duodecimo die M. a solutione p<sup>r</sup>dict 31 l. 10 s. in Cond<sup>i</sup>o p<sup>r</sup>dict supius p<sup>r</sup>dict Ratione cuius p<sup>r</sup>dict R. non dampnificat' fuit p p<sup>r</sup>dict R. de p & concern<sup>i</sup> p<sup>r</sup>dict script' Obl' 60 l. p eund R. & p<sup>r</sup>dict R. p<sup>r</sup>lat C. fact' & deliberat' Et hoc &c.

Et p<sup>r</sup>dict R. (cludi non) Quia die quod p<sup>r</sup>dict R. non solvit p<sup>r</sup>lat C. p<sup>r</sup> 50 l. 10 s. super p<sup>r</sup> duodecim diem M. quos ipse sup eund diem solville debuit secundum formam & effectum Condition p<sup>r</sup> put p<sup>r</sup> R. superius allegavit Et hoc per' &c. Vide Bro: Red. 193.

Aliter.

**H.** **Q**uibus lectis & auditis idem H. die quod p<sup>r</sup>dict C. (Action non) Quia die quod p<sup>r</sup> A. solvit p<sup>r</sup>lat W. B. p<sup>r</sup> 10 l. & 10 s. super p<sup>r</sup> decim<sup>u</sup> sext<sup>u</sup> diem Dec in



in Andors' pō supius spec quos eidem M.  
 B. super eundem diem solvisse debuit secun-  
 dum formam & effectum pō script' Obl' hic  
 in Cur' pōlat' superius menc' videt apud  
 A. in Paroch & Warda pō Et sic idem H.  
 dic' quod pō J. p solutionem pō 10 l. & 10 s.  
 p̄fat' M. B. modo & forma pō bene & suffi-  
 cient' indempn' conserbabit p̄fat' G. A. de  
 & a p̄ed script' Obl' 80 l. in Andors' p̄ed  
 script' Obl' hic in Cur' p̄lat' Acetiam de &  
 ab omnibus Actionibus lect' custag' ac omni-  
 bus Dampnis Iudic' Executioni & Demand  
 pō Script' Obl' 80 l. concernēd secundum  
 vim formam & effectum Andorsamenti ill' Et  
 hoc, &c. Unde, &c.

Et pō G. dic' quod ipse (precludi non)  
 Quia p̄testando quod p̄ed J. non indempn'  
 conserbabit eundem G. H. de & a p̄ed script'  
 Obl' 80 l. in Andorsament' p̄ed script' Obl'  
 hic in Cur' p̄lat' supius spec erga p̄ed M.  
 B. secundum formam & effectum Andorsamenti  
 p̄ed put p̄ed H. superius allegabit Pro P̄tis  
 to idem G. dic' quod p̄ed J. non solvit p̄e-  
 fat' M. B. pō 10 l. & 10 s. sup pō 16 diem  
 S. quos eidem M. B. sup eodem die solvisse  
 debuit secundum formam & effectum Condi-  
 tioni pō script' Obl' hic in Cur' p̄lat' supius  
 spec' put pō H. supius allegavit Et hoc pet'  
 quod, &c. Idem Bro. Red. 257.

Aliter per Adm'.

**A**libus lectis & auditis (Action non) quia dic' quod pō J. in vita sua solvit pō H. sup 22 diem M. in Conditione pō supius spec' pō, &c. (ut in al') videt' apud domum mansional' pō G. in W. pō Et eadem Ju. ulterius dic' quod pō Jo. in vita sua p solutionem pō 22 l. eidem H. in forma pō facit' acquietabit & indemnificabit pō G. Heres Execut' & Adm' suos & quemlibet eorundem tam de & ab Obligatione & Conditione pō quam de & a quibuscumque summa & summis veniat in eisdem content' secundum formam & effectum Conditione ill', Et hoc, &c.

Et pō G. (cludi non) quia protestando quod pō Jo. in vita sua non acquietabit seu indemnificabit pō G. tam de & a pō Obl' (&c.) quam (&c.) in eadem content' p Plito idem G. dic' quod pō J. in vita sua, non solvit pō H. sup 22 diem M. in Conditione (&c.) secundum formam & effectum Conditione ill' put pō Ju. supius allegavit Et hoc, &c.

Et pō Ju. ut prius dic' quod pō Jo. in vita sua solvit, &c. (ut antea) Et de hoc, &c. Vide Bro. Red. 194. Thomp. 426.

Aliter secund' Placitat' Gen. 340.

**A**ction non quia dic' quod post confectionem script' pō & ante diem impetracione hille pō scilicet (tali die & Ann) ipse

ipse solvit p̄stat T. V. p̄dict 100 s. in Con-  
dition p̄dict Obl' superius spec' secund' for-  
mam & effectum Condition ill' videlicet apud  
(&c.) Et sic idem W. dic' quod ipse bene &  
veraciter absq; cobina fraude seu decep̄tione  
exonerabit acquietabit & indem̄d' conserbabit  
p̄d M. C. de & a forisfactura p̄dict Obl'  
Indorsament' sup̄ius spec' de p̄dict 100 s. er-  
ga p̄dict T. heredes Execut' & Adm̄ suos  
& hoc, &c. Unde, &c. Vide 3 Brownl. 119.  
Cl. Aff. 82. 1 Inst. Cl. 218, 338. Hansf. 118.

¶ Non dampnificat per 3 scripta spec' in  
Conditione nec per eorum aliquod nec sectam  
in Lege sup̄inde. Hern. 302.

¶ Quod Creditor obtinuit iudic' versus  
quer' in Ban' Reg' Et def. super requisit'  
quer' solvit denar' in exonerat' iudicii Demurr'  
inde. Co. Ent. 139. Iudic' p̄quer'. Nota que  
le def. duist plede non dampnificat' general-  
ment, Et donque le Recovery destre plede  
del' auter part, &c.

¶ Bar per Conditiones perfor̄m Et issint  
non dampnificat'. Repl' per̄nient perfor̄m  
del Condīcōd' dun des 12 Obligācōnes spe-  
cificie en le Bar R. Dec' 234. Vide Siderf.  
442. That he was sued, and forced to retain  
an Attorney; he is not bound to give the  
Defendant special Notice.

¶ Al Obl' sur Repl' Bar quod Def. p̄s-  
fuit Querelam nondum adjudicat' Et quod  
quer' non est dampnificat'. Clift. 191.



Breach quod dampnificat' per Sect' in Lege,  
&c.

**N.** **B**AK' p non dampnificat', Repl' quod denar' fuer' insolut' & Obligee fait Exec' qui arrest' quer' p Latitat & detinuit quousque solvit denar', cum mis Demurr' inde. 3 Brownl. 174. Vide Style 356. Young and Petit.

**N.** **S**itis Bar'. Repl' quod denar' fuer' insolut' & Obligee psecut' quer' sup script' al Ex' fad quod quer' supsed'. 1 Mod. Intr. 195. Cro. Eliz. 264. Judgment against the Plaintiff after *Exigent*; immediately upon the Judgment given he was dampnified.

Cutler & al' vers' Southern & al' in Scacc'.

**N.** **S**itis Bar' Repl' quod denar' fuer' insolut' & Obligee conabat' arrestare quer', p quod quer' circa negotia sua licita ire non auderet & sic dampnificat'.

**N.** Quibus lectis & auditis iidem W. S. & J. dic' quod pdict' W. C. & P. P. Actionem suam pdict' inde vers' eos habere non debent Quia dic' quod ipsi pdict' W. S. & J. H. a reo confectioem script' Obl' pdict' hucusq' salvavissent & indemnes conservassent & indempnificavissent pdict' W. C. & P. P. ab omnibus turbaconibus, Angl' Troubles, Sect' incon-

inconvenienc dampnis & molestationibus de ex  
& per p̄dict T. C. in Condiçion p̄dict sup̄i-  
us nominat' vel aliquem aſ per eſus modum  
vel p̄curament' Et hoc (ſc.) Unde, (ſc.)

Et p̄dict W. C. & R. dic' quod ipſi per a-  
liqua p̄allegat' ab Actione ſua p̄dict' hēd'  
p̄cludi non debent, quia dic' quod ante tem-  
pus confeccionē ſcript' Obl' in Bar' p̄d ſupe-  
rius ſpec' ſciſt p̄mo die Oct' Anno Regni  
dicti Dom̄ Regis nunc 16. apud L. p̄d in  
Paroch & Ward p̄dict' p̄dicti W. C. & R.  
ad ſpecial' iſtanc' & requiſiçionē p̄d W. S. &  
J. per ſcript' ſuum Obl' ſigillis ſuis ſigillat'  
deveniſſent Obligat' T. C. in Condiçione p̄d  
mentionat' in penal' ſum̄ 200 l. ſub Condi-  
çione pro ſolutione 103 l. ad quendam diem  
in eadem Condiçione ſpec' tunc ventur' & jam  
p̄terit' Ac p̄ eo quod p̄dict' 103 l. non ſolut'  
fuer' p̄fat' T. C. ad p̄d diem in eadem Con-  
diçione mentionat' p̄d T. C. poſtea ſciſt 12  
die Febr' Anno Regni Dñi Regis nunc 18,  
apud L. p̄d in Paroch & Ward p̄d p̄ſecut'  
fuiſſet p̄fat' W. C. & R. ad Legem pro re-  
cupatione p̄d penal' ſum̄ 200 l. ſup̄ ſcript'  
Obl' p̄d per eos eidem T. ut p̄ſer' fact' ac  
p̄d W. C. & R. pro eodem debito arreſtare  
conabat' per quod iidem W. C. & R. in &  
circa Negotia ſua licita ſeip̄s negociare non  
auderent p̄pter timorem arreſtari & impriſo-  
nari p̄ p̄ed ſumma 200 l. Et p̄d W. S. &  
J. non ſervaber' conſervaber' indemnificaber'  
p̄d W. C. & R. ab omnibus ſectis inconve-  
nienc' & moleſtationibus ex & p̄ p̄d T. C.  
ſecundum formam & effectum Condiçionē p̄ed  
ſcript' Obl' p̄ed in Bar' p̄d ſup̄ius mentionat'  
Et

Et hoc parat' sunt verificare Unde pet' judic' & dehum suum pō necnon dampna sua occōne detentionē debi ill' sibi adjudicari. &c.

Nul' notic'.

Et predict' W. S. & J. dic' quod si ipsi iidem W. S. & J. aliquam noticiam huissent de dampnificatione ipsorum W. C. & P. p̄d' tunc ipsi iidem W. S. & J. p̄fat' W. C. & P. indempnificat' conservare voluissent, Sed iidem W. S. & J. dic' quod ipsi nulla habuer' notic' de dampnificatione ipsorum W. C. & P. p̄d' Et hoc parat' sunt verificare Unde pet' judic' Et quod p̄d' W. C. & P. ab Actione sua p̄d' hend' precludant', &c. Quer' moztatur in Lege Et Def. jung' in Porat'. 1 Saund. 114, &c. Idem 117. Upon the Argument it was said for the Plaintiffs, That the Rejoinder was ill for two Causes. First, Because the Defendants themselves ought to take Notice of the Act of a Stranger, as T. C. in this Case is, and the Plaintiff need not to give them Notice of the Damage occasioned by T. C. Secondly, For that the *Rejoinder* is a Departure from the Plea in *Bar*, for in *Bar* the Defendants plead, That they have saved the Plaintiffs harmless, and yet in their *Rejoinder* they confess, that they had not saved them harmless, but that they had no Notice of Damage, which is a plain Departure; and so was the Opinion of the Court.

Then it was argued for the Defendants, That the Plaintiffs Replication was ill, and there was an Exception taken to the Form thereof, viz. That the Plaintiffs by their Replication plead, *pro ea quod p̄d' Centum & tres libræ non solutæ fuer'*, and do not positively aver that the Money was not paid, and



and that the Pleading by *eo quod* was ill: The Case of *Palms vers' Ep'um Peterborough* was put, Cro. 33. Eliz. 241. and so 38 Eliz. Cro. 441. *Gooday vers' Michael, in Trespass' quia le Plaintiff obstruxit viam cum Januis præd' il eux enfreint*, and the Pleading by a *Quia* was adjudged ill: And in *Dyer 257. b. eo qd'* is adjudged ill Pleading. Another Exception was taken to the Form of the Replication, for that the Plaintiffs reply, That the said *Cooke prosecut' fuit ad Legem*, and shew not in what Court nor in what Manner, for *prosecut' fuit ad Legem* is issuable, being a Breach assigned by the Plaintiffs, to take Advantage of the Prosecution of the Bond. Then as to the Matter in Law it was argued for the Defendants, that here the Plaintiffs have assigned no Breach; for the Condition is, that the Plaintiffs stand bound to *Cooke* for the Payment of 103 *l.* 10 *s.* upon the first Day of *May*, and here the Plaintiffs have shewn that they were bound to *Cooke* in 200 *l.* Penalty for the Payment of 103 *l.* *ad certum diem jam præterit'*. And this was by Obligation dated after the Bond, upon which the Plaintiffs have brought their Action; for the Bond upon which the Plaintiffs declare is made the 8th of *March, Anno 16 Regni Regis nunc*, and the Condition recited that they stand bound, so it shall be intended, That the Bond of *Cooke* was then made; and the Bond to *Cooke* mentioned in the Replication, although it be pleaded to be made before, yet it is said to be upon the first Day of *October Anno 16.* which is Half a

(Part IV.)                      Ff                      Year

Year afterwards, so the Bond mentioned in the Replication, varies from the Bond mentioned in the Declaration in three Particulars. First, In the Day of making; for the one is supposed to be made at the Time of the Bond, upon which the Plaintiffs have brought their Action, and the other Half a Year afterwards. Secondly in the Sum to be paid; for the one is for One hundred and three Pounds ten Shillings, and the other only for One hundred and three Pounds. Thirdly, In the Day of Payment; for one is upon the first of May, and the other *ad quendam diem jam præterit*. which cannot be intended to be the same Day: And it is not averred, that the Bond mentioned in the Replication was entred into for the proper Debts of the Defendants; And then although the Condition was general to save harmless against the said Cooke of of all Actions, &c. yet it ought to have a reasonable Intendment; for it would be unreasonable to make such a Construction that the Defendants should save the Plaintiffs harmless from all Bonds, which they afterwards voluntarily entred into to the said Cooke for their proper Debt, for so the Plaintiffs shall take Advantage of their own Wrong, which would be unreasonable and absurd; but it ought to be construed, that the Defendants should save the Plaintiffs harmless from all Actions, &c. for any Cause before the making of the said Bond, upon which the Plaintiffs have brought their Action; for this is reasonable and according to the Intent of the Parties; and so it was concluded that the Replication was ill;  
and

and the Plaintiffs have shewn no Cause of Action, and then although the *Rejoinder* or the *Bar* is ill, the Plaintiffs can have no Judgment.

The Plaintiffs Counsel insisted on the Generality of the Words of the Condition, and that by the Condition, the Defendants ought to save the Plaintiffs harmless from all Actions whatsoever, although they were caused by the Plaintiffs themselves after the making of the Bond; for it was the Folly of the Defendants so to bind themselves. And he further argued, That the Bond entred into to *Cooke* mentioned in the Replication, was entred into before the Bond brought into Court, and so clearly within the Condition; for it is precisely averred that it was entred into before it, and then the *scilicet* being contrary in mentioning a Time afterwards is void: And he put many Cases where a *scilicet* shall be void, if it be contrary or repugnant to the Matter precedent, and if the *scilicet* be void (as he said it is) then the Defect of a Day is only Form, of which the Defendants can take no Advantage upon a General Demurrer, and prayed Judgment for the Plaintiffs. *Hale* Chief Baron and the whole Court would take no Regard to the Exceptions of Pleading: But upon the Matter in Law they were of Opinion against the Plaintiffs, and advised to discontinue, but the Plaintiffs would not, and afterwards (says the Reporter) they gave Judgment for the Plaintiffs, as *Levinz* told me.



*Vide* 1 Saund. 117, 118, &c. The Condition of the Bond above-mentioned, *viz.*

The Condition of this Obligation is such, That whereas the above named *William Cutler* and *Nicholas Purse*, at the special Instance and Request of the said *William Southern* and *James Hulker*, do stand bound and engaged to *Thomas Cooke*, of the City of London, Gent. for One hundred and three Pounds and ten Shillings, to be paid the First Day of May next coming after the Date thereof. If the said *William Southern* and *James Hulker* shall save, keep harmless and indemnified the said *William Cutler* and *Nicholas Purse*, from all Troubles, Suits, Inconveniencies, Damages and Molestations, of, from and by the said *Thomas Cooke*, or any other by his Means and Procurement, that then this Obligation to be void, otherwise to stand in full Power and Virtue. *Idem* 114.

See Clift. Ent. 147. *Bar* quod nulla requisit' seu noticia in Scriptis fact' fuit ad indemni custodiend, &c. *Vide* de noticia, 2 Keb. 529, 609, 642. Cro. Eliz. 613.

That he was sued and forced to retain an Attorney, and the Defendant *licet sapius requisit'* had not acquainted him. *Def. morat'* because the Plaintiff had not alledged particular Notice of the Suit. *Per Cur'*, He is not bound to give special Notice. *Siderf. p.* 442. *King* and *Atkins*.

See Aston's Ent. 247. *al's* 279. *Bar* per non dampnificat'. *Kept* quod denar fuer' insolut' *Per* quod Obligee minabat & conabat' ar-  
restare

restare quer' p quod quer' illos ei solvit. Et sic dampnificat'. Vide antea.

ff. Non dampnificatus. Repl', The Money was not paid per quod quer' fuit onerabilis & non ausus negotiis attendere, &c. Reso. That the Money was tendred and refused, absq' hoc, That the Plaintiff was chargeable Quer' morat' Et Iudic' p Quer', The saying he could not attend his Business is sufficient. 3 Keb. 336. vide 5 Rep. 24. 3 Bulst. 233. 10 E. 4. 27, 28.

ff. Sitis Bar. Repl' denar' fuer' insolut', Et quer' pro evitacone Sed' & Incumbanc' solvit denar' al' Obligee Et sic dampnificat'. Reso', Et Issue quod non solvit. 1 Mod. Intr. 193.

ff. Bar' per non dampnificat'. Repl' quod Obligee recuperavit iudic' vers' quer' sur Obl' in Cur' Vic' London, Et sic dampnificat'. Reso. per Pul' tiel Recoꝝ Surreso' quod het tale Recoꝝ & hzebe ad certificand' Recoꝝ agard, 1 Bro. 194.

ff. Sitis Bar. Repl' per Iudic' recuperat' vers' quer' in Wand Regis. Reso. quod Iudicium obtent' fuit per fraudem. Thomp. 145.

ff. Repl' quod R. in Com' Banco recusperavit 37 l. pro dampn' vers' def. Et quer' existend' eius Manucapt', R. prosecut' Scire fac' vers' quer' & habuit iudic' Et sic quer' dampnificat'. Thomp. 171. Vide Cro. Jac. 363. 2 Bul. 270. Defendant pleads quod libere & absolute exonerabit his Bail, and shews not how, 'tis ill; aliter if he had pleaded non dampnificat'.

¶ Bar per non dampnificat'. Rep<sup>t</sup> quod denar' insolut' existē Oblige<sup>r</sup> prosecut' quer' in Cur' Stannar' & quer' capt' fuit & detent' quousq; inveniit Manucap<sup>t</sup>, sup quo quer' ad evitand' custag' & verationem solvit denar' Et sic dampnificat'. Winch. Ent. 236.

¶ Condição de indemni<sup>da</sup> conservand' quer' de omnibus oneribus que evenirent sup relaxationem Def. extra prisonam (tunc existē in executionē ad lect' quer') ab omnibus personis que molestant' ipsum circa relaxationem ill'. Bar quod quer' affirmavit Quere<sup>r</sup> vers' R. in Cur' Civit' Eborum p 100 l. Et def. & und' H. fuit ballium, Quer' habuit iudic' vers' R. & ballium, & def. capt' fuit in executione superinde, quer' exonerabit eum de executione & quod quer' non dampnificat' fuit per relaxationem Rep<sup>t</sup> Le Pl<sup>t</sup> confesse tous matiers en Bar', Sed antequā def. capt' fuit in executione H. (le auter Bail) cum altero debent' tent' quer' pro solutione denar' super iudic', sup cons' inde quer' promissit H. quod ipse caperet Def. in executione & quod quer' non relaxaret eum sine assensu H. Def. capt' fuit in executione & quer' relaxavit eum H. profert Sedam vers' quer' super promissionē & recuperavit, sic quer' dampnificat' fuit per relaxationem. Def. Demur', Et Hobart & Winch maintain que le Ad<sup>is</sup> on bien gist. Et pur ceo Judgment fuit pur le Pl<sup>t</sup>. Vide Winch. Ent. 271, 280. Et Hob. Rep. 269. Wilden & Wilkinson.

It was here said, that by the Words (Damages) is not only intended Damages which arise directly by the Release, but to any other col-



collateral Act *dehors*, as in this Promise. *Vide* 1 Roll's Abr. 422, 431.

*Jf.* Defendant pleads *non dampnificat'* to his Bail. *Repl.* That the Plaintiff did not appear, *per quod* the Sheriff did prosecute him *per debitum Legis cursum*; 'tis a sufficient Breach, here being a Suit alledged. 2 *Keb.* 625.

*Jf.* Defendant pleads he paid the Principal, *J. S.* 20 *l.* in Satisfaction of 53 *l.* and so kept his Bail harmless; the Plea adjudged ill, because the Plaintiff might be dampnified before the Payment, to which he doth not answer, *Cro. Eliz.* 156.

*Jf.* Defendant pleads *non dampnificatus* to his Bail. *Repl. non comperuit. Rejo.* That the First Bond given was void *per* 23 *H. 6.* and there was no *Latitat* issued forth. *Per Cur.* This is a Departure, but notwithstanding the Bond, the Party is not estopped to say there was no *Latitat*, but the Non-appearance is a Dampnification, be the Bond void or not. 1 *Keb.* 59, 98.

*N. Bar' per non dampnificat'.* *Repl quod* Feme Obligee p<sup>re</sup>st baron, Et puis ils sue *Ozig & Ca. sur Obl' pro denar' insolut', p quod quer' p exoneratione sua a scripto & solutione p<sup>re</sup>st' debi expendidit 30 s. Et sic dampnificat'.* *Rejo. quod* Def. post *Ozig' & Ca* prosecut', pro exoneratione quer' solvit tot' debum & mis sect' & delibabit quer' scriptum cancelland Et traverse quod quer' expend 30 s. Issue inde tender sed def. nichil dic. 1 *Brownl.* 107. *Bro. Rediv.* 188.

Ff 4

*N. Sitis*

## Bar al Debt fur Obl.

**N** Sitis Bar' Repl' quod denar' solvend' ad tlem diem fuer' insoluc' per quod quer' p exoneratione sua a scripto coactus fuit solvere. Rejo. ptest', &c. pro p'tito quod Obligee ante diem relaxavit def. p script' general' relaxationis Demur' sp'ial eo quod decessit a barra. Bro. Red. 228. vide 22 Ed. 4. 40. b. upon Bond to discharge another against J. S. it is not sufficient to say he saved him harmless, he ought to discharge him by Release or otherwise.

## Ball against Richards.

**N** Sitis Bar' Repl' quod Def. ut Collector redd' spectand' Gubernator' & societate' Posi Rivi recepit 1300 l. quas non solvisset Thesaurario societatis per quod quer' minatus fuit arrestari & p redemptione sua agreare coactus fuit ad solvend' 250 l. ad usum Gubernatoris & societate' p'dict' per 50 l. quolibet dimid' ann' & sic quer' dic' quod ipse dampnificat' fuit. Def. moratur in Lege Et quer' jung' in morae. Vide Brownl. Rediv. 204, & 206. Where 'tis observed, That upon the Argument the Demurrer was like to go against the Plaintiff; but the Court gave Leave for the Plaintiff to amend his Replication, and the following Rule was made.

Trin. 4 Jacobi Secundi Regis.

Tempest.

**V**icesimo quinto die Junii, Ordinatur est quod Def. die Jobis' prox' futur' sup' notic' hujus Regl' sibi vel Attoz' suo dand' ostendet causam quare Quer' non emendat Replicationem usam super solutione Custag' p' Magr'm Tempest taxand'. Ball versus Richards.

Per Cur'. Walker.

Ex mocone Serbied Levinz pro Quer'  
10 Julii Ann' quarto Jacobi Secundi Regis.  
al lxxxv s.

Tempest.

After the Making the former Rule it is observed, That Serjeant *Levinz*, not liking that the Demurrer went against the Plaintiff, moved the Court without any Notice given to the Defendant, and the following Rule was made.

**T**hicesimo die Junii Ordinatur est quod Def. die Martis prox' futur' sup' notic' hujus Regl' sibi vel Attoz' suo dand' ostendet causam quare judicium super mora in Lege hic in Cur' inc' partes poict penden' non intret' p' Quer'. Ball versus Richards.

Per Cur'.

Ex mocone Serbied Levinz.

That



## Bar at Debt sur Obl.

That upon the Surprisal of this Rule, contrary to the Argument of the Demurrer and Rule upon it, the Defendant moved the Court, and the last Rule above was set aside, as by the Rule following.

Ball *versus*  
Richards.

**T**ertio Julii, super lectione Regule  
le 30 Junii ult' pterit' & super  
sacro' Ed Parker Gen' Ordinari' est  
quod dca Regula exoneret'.  
Ex mocone Servien Holt.

I appoint *Saturday* at Four of the Clock to tax the Costs.

*Tempest.*

*Note,* Upon this Rule the Costs were taxed as in the first Rule, and then the following Summons was made to shew Cause why the Plaintiff did not pay the Costs taxed.

Ball *versus*  
Richards.

**L**ET the Plaintiff's Attorney attend me at my Chamber in the *Inner Temple*, to Morrow at Ten of the Clock in the Forenoon, to shew Cause why he doth not pay the Defendant's Attorney the Costs taxed upon the Demurrer in this Cause.

*Edw. Lutwyche.*

Upon this Summons the Costs were paid, and then the Plaintiff replied as before, only, instead of *cone ejus pro redemptione sua*,  
*et.*

et. coactus fuit agreare, &c. he says, roñe  
cusuf ipfe idem J. W. poftea fcilicet 21 die  
April' Anno 3 fupradicto apud J. pñict coac-  
tus fuit agreare & adtunc & ihm agreavit cum  
Gubnator', &c. to pay 250 l. modo & forma  
fequent, &c.

Cr. Levinz.

Hereupon the Defendant rejoined *quod be-  
ne & verum eft*, That he received 1300 l.  
but that he paid it within one Month to the  
Treasurer, *Et de hoc pon' fe fuper P'riam &c.*  
J. Holt.

Here again it is obferved, That the Plain-  
tiff not liking this *Rejoinder*, and not thinking  
it fafe to join Iffue, his Attorney fummoned  
the Defendant's Attorney before Mr. Juftice  
*Lutwyche*, upon Pretence that the new Replica-  
tion was miftaken, and the Sum of 1300 l. was  
not the right Sum the Defendant flood charged  
with, and defired it might be amended, and  
made 23948 l. 4 s. 6 d. which the Judge or-  
dered the Defendant's Attorney to confent un-  
to, without paying the Defendant any Cofts,  
and then a Replication was put in to the Effect  
of the Replication above, only changing the  
Sum 1300 l. for 23948 l. 4 s. 6 d.

Cr. Levinz.

The Defendant by *Rejoinder* confefles the  
Receipt of 21541 l. 6 s. 5 d. but that he had  
paid it to the Treasurer of the Society with-  
in a Month after, and traversed the Receipt of  
23948 l. 4 s. 6 d. prout, &c.

Hereupon

Hereupon it is observed, That the Plaintiff would amend again without paying the Defendant the Costs of the last *Rejoinder*, which being denied him, the Plaintiff proceeded no further but let the Suit fall. *Vide Bro. Red. a. 204. ad 209.* See the Report 1 *Lut.* 472, 473.

*ff.* Condition to save indemnified the Inhabitants from Tithes. Bar p Condition' pform. *Repl* quod dampnificat' per sect' in Cur' Christiani Def. mozat'. Cl. Ass. 408.

De Indempn' conservand' ab Infante, &c.

*ff.* **C**onditio de Paroch' indempn' conservand' ab Infante spurio cum quo C. filia Defend tunc fuit pregnans. Bar' per Non dampnificat. *Repl'* quod C. filia Def. huc puerulum illicite procreat' Et quod per ordinem Justic' ad Generalem Session' Pacis Substantes de C. onerat' fuer' cum custodia & manutentione ejusdem & huc usq; ad eorum onera ill' manutenuer' Demur' inde. *Winch. Ent.* 325.

*ff.* Conditio de indempn' conservand' ab Infante spurio tam Major' Coitat' & Cives L. quam Paroch' de A. sur Obl' per Subnator' Hospitalis de B. post Oyer, &c. Def. plede Letters Patents pur le Incorporatiō de Bridewell. Et que ne appiert p ceux que les dits Governors ount payer a pprendre ou fuer tiels Obligatiōs, Demuri' inde & Judic' p Quer'. *Winch. Ent.* 328.

*ff. Vide*



§. *Vide* 2 *Saund.* 83. Debt upon a Bond given to Church-wardens, by the reputed Father of a Bastard-Child, to save the Parish harmless. Defendant pleads *Non dampnificatus* generally: Plaintiff replies, That none had taken care for the Space of a Month for the Child's Maintenance, and that therefore they were forced so to do, and paid Four Shillings.

Defendant *rejoins*, that he would have provided and offer'd so to do, as well to the Plaintiffs as to the Parishioners, but they would not permit him; yet in their own Wrong, and against his Will, put the Child to Nurse, and paid the Four Shillings, *Et hoc, &c. Unde, &c. per Cur'*. The *Rejoinder* was a Departure from the Plea in *Bar*, And that he should have said thus at first in the *Bar*: And therefore Judgment for the Plaintiff. *Vide Siderf.* 444. 2 *Keb.* 219. *Mod. Rep.* 45. *Richards* and *Hodges*.

§. The Condition was to pay Ten Shillings Weekly, *secundum Ordinem fact' per Justiciar'*, &c. for keeping a Bastard-Child, The Defendant *sur Oyer* pleads *nullum talem Ordinem fecer'*. *Judic' pro Quer'*; *aliter* if it had been *secundum Ordinem faciend'*. *Latch.* 125. *Fermin* and *Randal*; for the one is an Estoppel to the Defendant, the other is Executory. *Noy* 79.

¶ *Non dampnificat' ad sp̄ialem Conditionem.* *Kepl' p̄st* quod non *indempn' conserbavit*, p̄ p̄lito quod *Quer'* disposuisset & solvisset p̄ p̄p̄' usu *G. fil def.* 100 l. quas *Def.* non resoluit ei Et sic *dampnificat' Illuc* quod solvit. 1 *Mo. Intr.* 193.

§. A

§. A Condition was taken to keep a Parish harmless from a Bastard-Child. Defendant pleads, he had saved the Parish harmless, but shews not how. Plaintiff replied, that the Parish was warned before the Justices of Peace at the Sessions, and was there ordered by Record to pay so much for the keeping of the Child. The Defendant pleads *Nul tiel Record*. The Plaintiff demurs. 1. The Plea of *Nul tiel Record* was allowed a good Plea, because an Order of Sessions of Peace is a Record. 2. Judgment *pro Quer'*, because the Defendant's Bar is ill, in that he hath pleaded in the *Affirmative*, and shews not how: *Non dampnificatus* had been good, and it is not helped by Demurrer, it being Matter of Substance. *March 121. n. 200.* (See after.)

§. *Non dampnificatus* by placing *A.* in a Cottage. *Repl.* That the Inhabitants were forced by a Rate of Justices, &c. to provide Necessaries; 'tis good without shewing any particular Inhabitant was charged. 1 *Keble 392.*

§. Debt upon a Bond bearing Date the 10th. of *January*, 33 *Car. 2.* with a Condition to save the Plaintiffs harmless, being Bail for one *L.* at the Suit of *W.* Defendant pleads, *Quod quer' non dampnificat', &c.* *Repl.* That the said *W.* in *Mich. Term*, 33 *Car. 2.* impleaded the said *L.* in the *Exchequer*, and the Plaintiff's in *Hill. Term*, 33 and 34 *Car. 2.* became Bail for him, That *W.* had Judgment against *L.* and that *W.* died Intestate, and that the Bishop of *Lincoln* had granted Administration to *J.* and that *L.* had not paid the Money recovered against him, but that they

they had paid it to the Administrator. Defendant demurs. 1 *Lut.* 399, &c.

These Exceptions were taken to the *Repl.*

1. That it appears upon Record, that *W.* was dead before the Judgment.
2. That the Judgment being at *Westminster*, the Letters of Administration granted by the Bishop of Lincoln are void, and by Consequence the Money paid by the Plaintiff to *G.* *fuit de son tort.*
3. That it appears that the Bail mentioned in the Condition, could not be the same Bail which is mentioned in the *Repl.* for the Condition recites, Whereas the Plaintiffs are become Bail, and the Bond bears Date the 10th of *January*, 33 *Car.* 2. which was before *Hillary-Term*, and the *Repl.* says, That the Plaintiff became Bail in *Hill-Term*, 33 & 34 *Car.* 2. which was after the Making of the Bond—— Judgment *pro Def.* Vide 1 *Lut.* 401.

*§.* Debt upon a Bond to save the Plaintiff harmless from certain Mariners Tickets delivered to the Defendant: *Bar*, That he had saved him harmless; *Repl.* That he was arrested, &c. and had paid Twenty Shillings for his Discharge; *Rejoinder*, That the Plaintiff had falsely procured himself to be arrested with a Traverse, that he was arrested *aliter*, &c. *Quer' moratur in Lege.* 1 *Lut.* 422. Judgment in this Case was given for the Plaintiff, and referred to *Roll's* 2 *Abr.* 147. nu. 6, 11, 14, 15, 16, 17, 19. 2 *Cro.* 208, 290, 338, 602. *Cro. Eliz.* 896. *Cro. Car.* 386. *Hopehill* and



and *Searl's Case*. *Hob.* 18, 19, 116, 119. *Mod.* 164.

*§.* Debt upon a Bond made to the Bailiff of a Liberty, to save him harmless concerning Goods which he had levied by a Warrant, and as the Goods of one *K.* and had delivered them to the Defendant upon Request, who made Claim to the Goods, and returned *Nulla bona, &c.* *Bar per non dampnificat*, *Repl. & monstre coment, Def. Demurr.* 1 *Lut.* 593. It was here-upon insisted for the Defendant that the Bond was against Law, because it was to save the Plaintiff harmless from a false Return: But on the other Part it was insisted, That the Bond was lawful; and to prove it these Authorities were cited, 1 *Inst.* 206. b. 10 *Co. Bewfage's Case*. *Hob.* *Sir Dan. Norton's Case*. *Plow. Dive and Manningham's Case.* 1 *And.* 267. 3 *Cro.* 199. 2 *H.* 4. 9. 2 *Cro.* 199. And, by the Opinion of the whole Court, Judgment was given for the Plaintiff. But afterwards Leave was given to argue the Case again, and then the Court adhered to their former Opinion, but upon the Offer of the Defendant to pay as much as the Plaintiff was damaged, Execution was stayed, and referred to the Prothonotary to compute, &c. 1 *Lut.* 596.

*§.* Debt upon a Bond with Condition that the Defendant should pay to the Plaintiff Ten Pounds on the 8th of *January* ensuing; Provided that the Plaintiff saved harmless one *T. S.* of all Costs, Trouble, &c. which might accrue to him by Reason that the Plaintiff was then with Child. *Bar*, That the Plaintiff had

had sworn before a Justice of Peace, That the said T. S. was the Father of the said Infant ; for which the said T. S. was taken, and forced to find Bail, &c. *Repl.* That the Plaintiff the First of Aug. 8 W. 3. was delivered of an Infant, which was a Bastard, begotten by the said T. S. and that the said T. S. was not dampnified by reason of the Maintaining the said Infant ; *Def. moratur in Lege. 1 Lut. 667, &c.*

It was insisted for the Plaintiff, the Intent of the Condition of the Bond was, That the said poor Woman should have such a small Sum as Ten Pounds for maintaining her self and her Child, which as it appears was the Bastard-Child of S. and that the Defendant should not be put to any other Charge for Maintaining of them, but not to save him harmless against any legal Prosecution, to prevent which, was not in the Power of the Plaintiff or Defendant. And if the Proviso in the Condition of the Bond had been to such express Purpose, it had been repugnant to the First Part of the Condition, because against Law ; and to this Purpose were cited the Case of *Price and Phaner, Mo. 477. Dobson and Crew's Case, Cro. Eliz. 705.* and of this Opinion was the whole Court, and so Judgment was given for the Plaintiff. *Vide 1 Lut. 669.*

Other Observations on Counter-  
bonds, and Sureties to save  
harmless, &c.

§. **W**HERE a Man pleads any Thing out of *Chancery*, or a Thing to be done in *Chancery*, he ought to shew the same certainly, and to say in *Canc' apud Westm'*, otherwise upon Issue no *Venue* can arise. 2 *Bul.* 19 *Yelv.* 226. 1 *Brownl.* 117. 1 *Roll's Abr.* 430. A Plaintiff alledgeth Damage in Suit by a Legatee in *Chancery*. *Def. moratur. Judic' pro Quer'*. 1 *Keb. Hill.* 14, 15 *Car.* 2. p. 464.

It was awarded that the Obligor should cease his Suit in *Chancery*, but the Obligor exhibited a new Bill, and prayed Process, but took out none; this was no Forfeiture of the Condition, for he was at no Damage by this. 1 *Roll's Abr.* 432.

§. The Defendant pleads *Non dampnificatus*; Plaintiff replies and shews a Breach on the Defendant's Part, wherein he was dampnified; the Defendant demurs, because the Breach was assigned to be at *Westminster*, and doth not shew in what County *Westminster* is, and good. *Style p.* 142. *Nelson versus Thompson.*

§. Upon a Condition to indempnifie the Plaintiff and his Lands from an annual Rent; Defendant pleaded *Quod a tempore consecution' script' Obl' hucusque exoneravit & indempnem conservavit, &c. Et hoc &c.* Plaintiff demurs; he ought to shew *quomodo exoneravit*, it being



ing a Plea in the Affirmative : Had he pleaded *non indempnificat*<sup>2</sup>, it had been good. *Cro. Jac.* 634.

*ff.* The High Sheriff brings Action against the Under Sheriff. Defendant pleaded he saved him harmless. The Plaintiff demurs, and the Plea adjudged ill, for he may save him harmless in many Things, and yet the Plaintiff may be dampnified in some other; he ought to have pleaded *non dampnificatus*. *Style P.* 23 *Car.* 1 *fo.* 16 *Wroth* and *Elsey*.

*ff.* The Under Sheriff against a Bailiff, for not executing Process, alledged the Manor was within the Hundred where he was Bailiff, *quod oportuit*, for a Bailiff cannot execute a precept out of his Hundred. *Style p.* 18, 23 *Car.* 1. *Alleyne p.* 10. To save harmless from Escapes. Defendant says he saved him harmless, but says not how; it had been ill in special Demurrer, but aided by General Demurrer. 2 *Keb.* 629. 3 *Keb.* 198.

In *Alleyne p.* 25, it is said, The Condition of a Bond to save the Obligee harmless, concerning his Buying of certain Goods at such a Price, extends not to the Price, but the Title.

It is also said that a Counterbond Writ in a Book is good. *Cro. Eliz.* 613.

Upon a Bond to discharge and save harmless, in such Cases the Defendant ought to plead *non dampnificat*<sup>3</sup>; for that he had saved him harmless, doth imply that he was not dampnified. 1 *Keb.* 379.

*ff.* A Condition was to save the Obligee harmless of a *Nomine pœnæ* against M. To plead he had saved him harmless, and not to

shew how, is not good. Had he pleaded *non dampnificatus* in the Negative, it had been good. *Winch. Rep. 9.*

§. The Condition was to save harmless from all Obligations which he had entred into for him. Defendant pleads *qd' exoneravit & indempn' conservavit* from all the Obligations, and shews not from what, and yet good, because there might be many, and so to avoid Perplexity of pleading; yet because he pleaded not *quomodo exoneravit* but generally, the Plea was ill. *Cro. Eliz. 916.*

### Sureties, &c.

§. **O**NE is bound with another as his Surety jointly and severally; they are said to be both Principals, and neither Pledge or *Fidejussor* for the other; and one cannot have the Writ *de Plegiis Acquietandis* against the other; for this lies not but where one is named expressly as Surety in the Bond. *Hob. 53. Dyer 370.*

§. The Custom of *London* is, if many are bound as Sureties, if the Principal fail of Payment, and one of the Sureties is sued upon the Obligation, he may have a Writ *de Contributione facienda* against the other Sureties. *Moor 266. 2 Leon. 166, 167.*

§. One Surety may pay the Money, and have the Money decreed to him in *Chancery*, *Latch. 170.*

Note,

Note, Actions on the Case brought upon Promises to save Sureties harmless. *Et Bar quod non assumpsit custodire quer' indempn' &c.* Rast. Ent. 11, 12. *Nurrs.* Hern 120, 121. 1 Brownl. 213, 240. 3 Brownl. 51, 71, 103. Ast. 37. Bro. Red. 27, 39. 1 Brown's Ent. 32, 40, 68, 74. Thomp. 12. Rob. Ent. 92, 106. Hanf. 45. Clif. 44, 79, 80, &c. *Non fuit dampnificat'* Hanf. 118. *Traverse, Quod assumpsit conservare Quer' indempnem, Et Issue sur le Traverse.* Rob. Ent. 93.

*ff.* The Surety cannot plead that the Principal was kept in *Durefs* till he and the Defendant entred into the Bond, though the Principal might plead it; for none shall avoid his own Bond for the Imprisonment or Danger of any other than himself only. 1 Brownl. 54. *Cro. M. 5. Jac.* 187.

*ff.* Defendant pleaded that the Bond to *J. S.* (wherein the Plaintiff was bound with him as Surety) was upon Usurious Contract, and pleads the Statutes, *Et sic non dampnificatus.* 'Tis no Plea, for he ought to save his Surety harmless; and it shall not be intended that the Surety knew of the Usurious Contract. *Cro. Eliz.* 588, 643. 2 *Leon.* 166. 3 *Leon.* 63. The Statute saith, All Bonds and collateral Sureties made for the Payment of Money lent upon Usury, shall be utterly void: But here the Counterbond was not for Payment of the Money lent, but for an Indemnity of the Surety,

*Q.* 1 *Roll's Rep. p. 7.* cited in *Freeman and Sheen's Case*, where 'tis said, If a Man be bound to preserve his Surety *sans* Damage of an Obligation



ligation, if he suffer the Obligation to be forfeited; yet this is not any Damnification, and by this the Counterbond is not forfeited. And See 3 *Bulst.* 233, the Money not being paid at the Day is a present Forfeiture of the Counterbond for he hath put the Plaintiff in Danger of being arrested, and is a present Damage. 10 *E.4.* 27, 28.

*ff.* Defendant pleads, That *J. S.* the Creditor sued the Plaintiff on the Bond, and had Judgment, but before Execution he delivered the Money to the Plaintiff to satisfy it: No Plea; for by the Judgment the Party is damnified, and the Costs are not paid. *Cro. Eliz.* 396. 1 *Roll's Abr.* 432.

*ff.* Defendant pleads, That at the Day of Payment he was going *ad solvend'*, and that the Plaintiff by Covin betwixt him and another Stranger, caused the Defendant to be imprisoned till after Sun-set; it was adjudged an ill Surmise and no Bar. *Cro. Eliz.* 672.

*ff.* *B.* was bound with *K.* for the Payment of 200 *l.* to *A. B.* If therefore *K.* should save harmless *B.* of all Suits, Quarrels and Demands touching and concerning the said Bond of 200 *l.* then, &c. *B.* came to the Place of Payment at the Day and peceiving no Person there present to pay the 100 *l.* for *K.* he, to save the Penalty of his Bond, paid the 100 *l.* to *A. B.* and so brought his Action upon the Counterbond. Defendant pleaded *non damnificatus*; the Plaintiff replied, and shewed the special Matter, and the Defendant demurred; adjudged *pro Quer'*; for it was Harm

to him, and it was not needful for the Plaintiff to be arrested or sued: And this Plea of *Non dampnificatus* implied, That the Defendant had saved him harmless, as by Release, Payment or otherwise. *Vide 5 Rep. 24. Broughton's Case.*

§. Defendant pleads he caused the Party with whom the Plaintiff was bound, to submit himself to Prison, and that the Plaintiff was not damnified. The Plaintiff denies not the Bar; but says, That a *Latitat* was sued out against him, and so he was forced. Defendant demurs; The Plea is ill, and the other hath alledged an ill Breach: He saith not he took a *Latitat prout patet per Record*, the Words in the mean Time refer to the last Words in the Condition, and Judgment *pro Def. Style 356. Young and Petit.*

§. The Condition was, That whereas the Plaintiff was obliged in such Obligations for the Defendant, that if he were charged or molested in his Body or Goods for those Obligations, he would within a Month satisfy him for it. Defendant saith he paid him such a Sum for all his Charges within a Month; 'tis no Plea, for he ought to shew how the Plaintiff was molested, and that he had satisfied so much, or that he was not molested. *Cro. Eliz. 393. Hutchinson and Lawson.*

Money prayed out of the Coroner's Hands by one who had paid the Debt as Surety.  
*Vide 2 Keb. 400. Foster and Closon.*

§. Defendant after Oyer of the Bond (which was made to the Arbitrator) sets forth the Award at large; and that *M. S.* the other Par-

ty in the Submission, was not damnified, &c. Repl. by a Fine levied, and no Notice given, whereby one N. B. that married M. S. coming with his Servants to the Park to cut Wood, according to Award, were disturbed by the Servants of the Conusee. *Rejo' Non disturbavit, & Issue. Cl. Ass. 300, 308, &c.*

And Note, In Equity, a Surety shall not be chargeable further than he can be by Law, and therefore in the Case of *Ratliff vers' Graves, & al' Mich. 1683. in Canc'* where Sureties for the due Administration of a Personal Estate get up their Bond, and procure insufficient Sureties to be accepted in their stead, in the Prerogative Court, the former Sureties being once discharged in Law, Equity will not charge them. *Vernon's Chancery Reports. 196.*

See more in 3d Part p. 221. and also hereafter in *Bar al Obl' sur Arbitrement.*

Which as well for the Conveniency of the Readers as the Matter, is referred to a Fifth Part; and in which Care shall be taken to give full Satisfaction,

*By your Servant*

R. G.

T H E



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# THE T A B L E.

## *Covenant and Condition.*

**A** Continuation of this Head of Covenant, together with a Review, either by Precedent of Reference, of all Pleadings extant relating to the same, as also the Title of *Conditions*, as they have a Relation to *Covenants*, in the several Particulars following.

From pag. 1 to 239.

### *VIZ.*

- (1.) Bars concerning Covenants to make Assurances of Land, &c. from 1 to 8
- (2.) Concerning quiet Enjoyment, and Lands freed from Incumbrances 8, 9, &c.
- (3.) By general Performance of Covenants, &c. 15, 16, &c.
- (4.) Concerning Non-payment of Rent, &c. 19, 20
- (5.) Covenants concerning Repairs 32, 33, &c.
- (6.) Concerning Charter-parties, &c. 36, 37, &c.
- (7.) Covenants concerning Apprentices, Servants, &c. 38, 39

(1.) *Breaches*

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## (1.) Breaches and Bars therein concerning Covenants to make Assurance of Lands.

- Breach, That the Counsel devised a Note of a Fine to be levied. Bar, *Protestando non devisavit, pro Placito non requisivit ad cognoscend. eandem notam Finis*; secundum 1 Lut. & Co. Entr. Page 44
- Bar, That the Plaintiff had not made him any good Assurance. Plaintiff demurs; with Notes thereon; secundum 1 Lut. 44, 45, &c.
- Bar, That a Stranger had no Title to make a Release; secundum 1 Saund. with Notes thereon, 48, &c.
- Defendant pleads Statute 13 & 18 Eliz. to avoid the Covenants to make a College-lease; secund. Winch. with Notes thereon from Hob. Rep. 51
- Bar by Maintenance betwixt the Plaintiff and his Intestate; secund. Bro. Red. 57
- That the Defendant came with a Deed of Feoffment, &c. and that the Plaintiff did not come there, &c. secund. Rastal. 58

## (2.) Concerning quiet Enjoyment, &c.

Defendant pleads Covenants performed generally, to Debt upon a Bond, conditioned for Performance of Covenants in an Indenture of Assignment; secund. 1 Saun. Repl<sup>r</sup>. That one T. was seized until R. disseized him, and demised to the Defendant, who

## The TABLE.

who assigned to the Plaintiff; whereupon  
T. re-entred, &c. with Notes thereon  
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That the Plaintiff was the first Occupant, and  
not the Defendant; *secund. Bro. Red.* 65

That the Defendant was expell'd by the Earl  
of *Essex*; *secundum 2 Brown. Repl.* and *Is-*  
*sue* thereon 66

*Repl.* That the Defendant held over the Pos-  
session; *secund. Bro. Red.* 68

Bar by Surrender of Copyhold Lands; *secun-*  
*dum 1 Saund. Repl. per prior Surrender ad*  
*Usus & Clam' per Ux', Demurrer inde cum*  
*Notis* 69, &c.

*Repl.* That the Plaintiff was obstructed in his  
way by a Tenant of the Defendant's; *se-*  
*cund. Lev. Ent.* Upon general Performance  
pleaded, *Def. moratur, cum Notis*; *secund.*  
*3 Lew. Repl.* 75, &c.

Other Notes upon a Covenant for quiet En-  
joiment of a Garden, &c. from *3 Lev.*  
*Rep.* 77

Bar, By Conditions, or Covenants performed  
Specially, *viz.* In Debt on Bond to per-  
form Covenants in Indentures, after Oyer  
of the Bond, &c. the Defendant pleads in  
Bar a Lease, and Release to Uses by way  
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### (3.) Bar by General Performance of Covenants, &c.

Defendant pleads Performance of Covenants  
in Articles generally. 84

*Aliter*



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The like by an Executor.	89
<i>Aliter, Repl.</i> by an Administrator as to the remaining Covenants, &c. in a Defeazance upon a Recognizance; <i>secundum Co. Ent.</i>	ibid.
<i>Al Scire facias sur Recogn' per performance de</i> Covenants. <i>Repl. al Bar</i> by Performance of several Covenants pleaded after Oyer, &c. and that the Lands were of the Yearly Value of 12 l. and free from Incumbrances; <i>secundum Co. Ent.</i>	88
That he performed the Covenants specially; and as to the Covenant of not Ploughing the Lands, he pleads the Statute of 5 Eliz. of holding Lands in Tillage; <i>secundum</i> <i>Co. Ent.</i>	89
<i>Bar</i> , That before the Original brought, the Indentures were cancelled by Consent; <i>Et</i> <i>Demurr' inde</i> ; <i>secundum Winch.</i>	91
Defendant pleads in <i>Bar</i> , an Accord, and Pay- ment in Satisfaction of the Covenants; <i>secund.</i> 1 <i>Lut. cum Notis</i>	92
<i>Aliter, Bar per Concord &amp; Repl. per Nul tiel</i> <i>Concord</i> ; <i>secund. Co. Ent. cum Notis</i>	93

(4.) *Bar, &c. about Non-payment of Rent, &c.*

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<i>Non concessit annuum Reddit'.</i> <i>Co. Ent. ibid.</i> 2 <i>Quoad</i>	

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*Quoad part' nul Rent arrear, quoad resid' qd' levavit per Distress. Repl. non cepit nomine districtionis ; secundum Rast. Page 98*

*Aliter per diversas Districtiones ; secundum 1 Brown. ibid.*

*Qd' quer' Expulit Def. secund. Bro. Red 99*

*Aliter per Entry & Expulsion ; secund. 2 Mod. Intr. ibid.*

*Aliter per Entry, Expulsion & Continuance del Possession ; secundum Thomp. 100*

*Qd' solvit ad Festum, Et sic non debet ; secund. Clift. Ent. 100*

*Parat' ad solvend' Et uncore prist, Et quer' recepit denar. secundum Placit. Gen. & Rast. ibid.*

*Qd' Def. assignavit Terminum ; secundum 2 Saund. 101*

*Qd' assignavit al D. ante impetrac' Original', qui intravit, Et nul Rent arrear tempore Assignationis, &c. secundum 3 Lev. cum Notis. 102*

*Qd' sursum reddidit Statum, &c. Rpl' Qd' non secund. Rast. 103*

*Aliter, Et Repl' quod non ; secund. Placit. Gen. ibid.*

*That he had Surrendered before the Grant of the Reversion, and the Lessor had accepted. Repl' quod non ; secundum 1 Saund. cum Notis. 104*

*Qd' nihil Tenementorum transivit in Possession' Def. per Scriptum Dimissionis ; secundum Rast. 107*

*To a Declaration in Covenant for Non-payment of Money according to certain Articles of Agreement, Defendant pleads in Bar, that*

## *The T A B L E.*

- that the Plaintiff had accepted a certain Sum in Satisfaction. *Page* 108
- To a Condition to perform Articles, Defendant pleads Conditions performed, Part in the Negative, and Part in the Affirmative. Plaintiff assigns Breach for not paying Money into the Post-Office. Defendant demurs; *secund.* 2 Saund. *cum Notis.* 109
- Debt on Covenant to pay Five Pounds towards the Education of the Defendant's Daughter for five Years; Defendant *protestando*, she was not then his Daughter *pro placito*, that the five Years are not expired; *secund.* Lev. *Entr. cum Notis*, & 3 Lev. Rep. 114
- Action against an Heir upon a Covenant to stand seized to Uses, and 400 *l.* Jointure made; *Bar per Riens per Discent*; Repl. by a former Original, Narr' and Judgment; after which one of the Plaintiffs died, and the Plaintiff purchased this new Writ, and then the Defendant had Assets. *Rejo.* That the first was discontinued, and his Writ was not *recenter prosecut'*; *secund.* 1 Lut. *cum Notis.* 115, &c.
- Debt by an Administrator to perform Articles upon a Covenant to pay ten Pounds Yearly to the Wife, during Life, in lieu of her Thirds. The Defendant pleads Performance of Covenants generally. *Repl.* and Breach, That five Pounds was due to her 25 *Martij*, and that the Wife was living after the 25th of *March*, &c. and the Money not paid. Defendant demurs; *secund.* 1 Lut. *cum Notis.* 121, &c.

*Similis*



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*Similis Bar* upon Marriage-Articles, to pay Ten Pounds *per Annum* for the Use of the Wife. *Repl.* That the Marriage was solemnized, and Ten Pounds due such a Feast, &c. *Demurrer inde ; secundum 1 Lut. cum Notis.*

Page 123, &c.

Action by an Administrator *durant minoritate W. R.* for Rent *sur Covenant, Bar,* That after the last Continuance the said *W. R.* attained his Age of 21. *Demurrer inde ; secundum 1 Lut. cum Notis.*

226, &c.

After Recital of an Indenture upon a Bond against an Administrator, where the Plaintiff was to have 200 Furze-Faggots or Wood-Faggots during the Term. Defendant pleads Covenants performed generally. *Repl.* That he had not of the Intestate in his Life, or of the Defendant afterwards, 200 Furze-Faggots Yearly during the said Term ; but that 800 Furze-Faggots, or 800 Wood-Faggots were due, &c. Defendant demurs ; *secundum 1 Lut. cum Notis.*

129

Action for 150 *l.* upon Articles that *T. P.* Vicar of *S.* should permit the Defendant to take Duties and Payments, and should make a Grant of them, and surrender the Vicaridge, so that the Defendant might present. Defendant covenanted to pay the Plaintiff 150 *l.* *Bar,* That *T. P.* died in the said Year, and before *Michaelmas, &c. Demurr. inde ; secundum 1 Lut. cum Notis*

131, &c.

Breach for Rent due, and not making Repairs. *Bar,* as to the Rent, That the Plaintiff had accepted 5 *l.* 5 *s.* in full Satisfaction ; and as to the Repairs, that he from Time to Time

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- Time did repair them in a reasonable and convenient Time, and traverses that they were unrepaired. *Repl.* as to the Rent, *Non solvit, & Issue*, and as to the Repairs the Plaintiff maintains his Court and Issue thereon. *secund.* 1 Lut. &c. Page 133, &c.
- Bar*, That the Defendant left two Mill-stones upon the Mill, and that the Parties who first viewed them at their Discretion, had not agreed upon their Goodness, &c. and then pleads Covenants performed generally. *Repl.* That he left not so good as he found, nor gave Satisfaction, &c. Rejoinder by a Repetition of the *Bar*. *Demurrer inde*; *secund.* 1 Lut. *cum Notis.* 136, &c.
- Defendant pleads that at the several Rent-Days he was ready upon the Land before Sun-set, to pay the Rent. *Demurrer inde*; *secund.* 1 Lut. *cum Notis.* 140
- Upon Breaches assigned by Husband and Wife in Covenant, for Rent and for Defect in Repairs, and for rooting up Trees. *Bar* by Outlawry in the Husband upon a Suit in the Common Pleas. *Demurrer inde*; *secundum* 2 Lut. 142, &c.
- For 2200 *l.* upon a Covenant to assign Shares to the Defendant, and Defendant to pay 1100 *l.* 30 *Jan.* *Bar*, That he upon or before 30 *Jan.* had not appointed any Person to whom he might assign, and that the Plaintiff the said Day had not assigned to the Defendant himself. *Demurrer inde*; *secund.* 1 Lut. 145, &c.
- Bar per non est Factum* to Debt upon an Indenture for 553 *l.* brought by an Administrator

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frator upon a Covenant to pay to the Intestate 200 *l.* within three Months after her Marriage, if she should be then alive, and 200 *l.* more within two Years after her Marriage, if she or any Issue of her Body should be then alive, with Interest for the said 400 *l.* with Averment, That she was married 16 *May*, 1670. and Notice to the Defendant; and Averment, That she lived five Years after her Marriage, with a Computation of the Interest and Sum *in toto*; Verdict *pro Quer'*, and Motion in Arrest of Judgment, with the Exceptions made as in 1 *Lut.*

Page 148, &c.

Debt for Rent, *Bar per Statute de Non-residence*; Repl. *Qd' non absentavit, Et Issue. secund. Thomps.*

150, &c.

To Debt on Bond Conditioned to perform Articles for the Enjoyment of *Glebe Lands* and *Tithes*, the Defendant pleads in *Bar*, Conditions and Covenants performed Specially.

153

Debt upon the Statute of 29 *Car. 2.* for Augmentation of Vicarages. *Bar per Stat. 13 Car. 2.* for not reading Common Prayer: Repl. *Qd' solemniter legebat, &c. Def. moratur. secund. 3 Levinz, cum Notis.*

157, &c.

Upon Non-performance of Articles for Rent; Defendant pleads, That the Plaintiff was a Bankrupt, and that the Defendant paid the Money to the Assignees of the Commissioners of Bankruptcy; *secund. Thomp. 164, &c. Aliter.*

168

Upon a Condition to perform Articles for Payment of 10 *l.* per *An.* to the Plaintiff's Wife, so long as the Plaintiff's Wife,

H h

and



and Defendant *cohabitarent*. Bar, That at the Time of the Articles, or at any Time after, *minime cohabitaverunt*. Demurrer inde; *secundum* 1 Lut. *cum Notis*. Page 171, &c.

Debt for Rent of four Rooms upon a Lease Parol; Bar as to Part by *Nil debet*, and as to the Residue, That the Plaintiff dismissed five Rooms, and that the Plaintiff had entred into the fifth Room. Demurrer inde; *secundum* 1 Saund. *cum Notis*. 172, &c. Bar, That a Lease made to an Alien shall be void by Stat. 32 H. 8. Demurrer inde; *secundum* 1 Saund. *cum Notis*. 177, &c.

(5.) Bars concerning Repairs and other Covenants in Indentures.

Bar, That the Premises were sufficiently repaired, and Issue thereupon generally; *secundum* 1 Mod. Intr. 180

*Aliter*, Et Repl. Qd' Def. *non performavit*, &c. *pro Placito*, That he suffered Part of the Premises to be in Decay; *secundum* Rast. Rejoinder *quod non*, &c. *ibid.*

Non dimisit al part Et demurrer al part, viz. as to the Defect of repairing the Chancel, *non demiser'* & Demurrer to the Residue; *secundum* 1 Saund. *cum Notis*. 181, &c.

Defendant pleads, that he was ready to repair, and two Pieces of principal Timber were necessary, of which the Plaintiff had Notice, and yet he did not deliver them. Demurrer inde; *secundum* 1 Lut. *cum Notis*. 184, &c. Defen-

## The TABLE.

Defendant pleads Performance of Covenants generally, *Repl.* That the Defendant had permitted the Mills to be in Decay, and sets forth the Particulars. *Rejoinder*, That he requested the Plaintiff to allow him Master Timber; *secundum, &c.* and that he had refused to do it. *Demurrer inde; secund. 1 Lut. cum Notis.* Page 186, &c.

### (6.) Bars concerning Charter-parties, &c.

Condition concerning a Voyage by Ship. *Bar*, That the Ship was well Mann'd, Victualled and Tackled, but in the Voyage was broken, and rendred unable by a Storm. *Repl.* That the Defendant suffered the Ship to be unable for Default of Repairs, with Intent to defraud the Plaintiff. Defendant repeats his *Bar*; *Quer<sup>o</sup> moratur; secund. 1 Lut. cum Notis.* 187, &c.

Upon a Covenant to save harmless from Suits commenced before the End of *Michaelmas* Term, and Breach by a Judgment against the Plaintiff upon a *Scire Facias* certified out of the Exchequer. *Bar*, That the *Scire Facias rei veritate primo emanavit* after *Mich.* Term, viz. 30 Nov. &c. *absque hoc quod actualiter emanavit ante finem, &c.* *Repl.* by way of Estopple, and Demurrer thereon; *secund. 1 Lut. cum notis.* 191, &c.

Upon a Bond to perform Articles between a Brewer and an Innkeeper, upon a Demise of an Inn by the Brewer. Defendant pleads Covenants performed generally. *Repl.* That

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he was always ready to serve the said Inn with Ale and strong Beer; *secundum*, &c. but for Breach says, That the Defendant, during the Term, bought Beer and Ale of other Brewers, and had sold it in the said Inn. *Demurrer inde*; *secund.* 1 Lut. *cum Notis.* Page 194, &c.

### (7.) Bar in Covenant, concerning Apprentices and Servants, &c.

Defendant *protestando*, &c. *pro Placito*, That The Plaintiff delivered the Goods to be accompted for, and that he accompted with the Defendant, who accepted the Accompt, and the Money thereupon paid by the Plaintiff in *plenam Satisfactionem recepit*, &c. *secundum* Vidian 80. & Privileg. Lond. 330 197

Defendant pleads that the Plaintiff left his Service without his Licence; and that he thereupon refused to take him again into his Service; and traverses that he put him out of his Service at *N. prout in Narr.* *Quer' moratur*; *secund.* Vidian, & Priv. Lond. 198

To a Narr' against an Apprentice in London. Bar by a Judgment in the Mayor's Court upon the Custom of the City for an Apprentice (who was not inrolled in the first Year) to depart from his Master. and traverseth that he departed before the Judgment; *secundum* Vidian. 200, &c. Bar



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*Bar al Obl'* concerning a Mariner's Apprentice)  
by Statute 5 *Eliz. Cap. 5 Par 12.* which  
requires that the Apprentice should be in-  
rolled, &c. and that the Indentures were not  
enroll'd. *Repl.* That the Apprentice had de-  
parted from his Service. *Demurrer inde ;*  
*secundum 1 Lut.* Page 209, &c.

Defendant pleads, That by the Statute of 5  
*Eliz.* it should not be lawful for any such  
Master to take an Apprentice (except his  
own Son) unless the Father or Mother of  
such an Apprentice had 40 s. *per Annum*,  
to be certified by three Justices under Seal.  
*Repl.* That the Defendant's Father at the  
Time of the Indenture was seized in Fee  
of Lands of 40 s. *per Annum*, *fore certificat'*  
& *irrotulat'* *secundum formam Act'*, &c.  
*Rejoinder*, *Qd' pater Def. non fuit seisi'* *de*  
*Terris ; Demurrer inde ; secundum Winch.*  
*Entr.* 212, &c.

*Aliter, secund. Bro. Red.* 216, &c.

*Aliter, secund. Robinson.* 219, &c.

*Bar*, That the Master turned away the Ap-  
prentice, and that he had faithfully served  
him till that Time. *Repl. protestando*, That  
the Apprentice did not perform any Thing,  
&c. *Pro Placito*, That he departed against  
the Plaintiff's Consent, and traverses that  
he put him from his Service. *Rejoinder and*  
*Issue* upon the Traverse ; *secundum Privil.*  
*Lond. & Hern.* 222, &c.

Debt upon a Writing of Agreement, &c. Ma-  
ster pleads in *Bar*, That for the better In-  
struction and Experience of his Apprentice,  
he sent him with other expert Chirurgeons

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to B. in the Indies, using his Art for the said Time. *Et demur' inde ; secund.* Winch, cum Notis ; *secund.* Hob. Rep. Page 224, &c.  
 A Servant brings Debt for his Wages. Defendant pleads that before such a Day, he discharged the Plaintiff from his Service, whereupon he left his Service. *Repl Qd' non exoneravit*, and Issue ; *secund.* Placit. Gen.

227

Defendant confesses that the Plaintiff did come into the Service of the Testator, and therein continued till such a Time, when the Testator did plentifully provide for him, and that such a Day the Plaintiff voluntarily left the Service of the Testator, and traverses, that he served him the whole Time in the Declaration. *Demurrer inde ; secund.* 1 Saund. cum Notis.

227, 228, &c.

Defendant pleads, *protestando* that the Apprentice performed his Covenant, *pro placito* no Notice was given of any imbezilment. Breach assigned for Money purloined, &c. and Notice given. Issue *sur le Notice ; secund.* Thomp.

232

Defendant being bound for the Truth of an Apprentice pleads to the Action, That the Apprentice hath not purloin'd or imbezilled any Goods, except such particular Goods, for which he offered to pay. *Repl. protestando* he did not offer, &c. *pro placito*, that he imbezilled 5 l. besides other Things confessed. *Rejo.* Maintains the Plea, and Issue thereon ; *secundum Bro. Met.*

233

The Defendant says, That the Testator *post confectiorem scripti obiit*, and that the Apprentice

tice

## The TABLE.

*tice ad nullum tempus post confessionem scripti absentasset, Et quod non imbezillavit. Repl. Qd' imbezillavit. Rejo. Et Issue; secundum Cl. Af. Page 235*

*Narr' in Debt upon a Bond for the true Service of an Apprentice. Bar, by Performance of the whole specially, and that no Notice was given of any imbezilment; Repl. That such a Day at H. in partibus transmarinis, such and such Goods came to his Hands, and that he was required to give an Accompt of them, &c. Demurr' inde; secund. i Lut. cum Notis. 236, &c.*

Debt.

*Bar al Debt sur Recovery.*

Defendant pleads in *Bar*, That the King did not grant any such Court to hear Pleas between Persons not being of the Household; *secundum* Winch. Ent. See 3 *Keb.* 372. *Newman* and *Rivet*, where after Judgment on *non est factum*, the Defendant assigns for Error, that the Plaintiff was the King's Brazier. *Demurrer inde*; he is estop'd to say that, but should have taken Issue on the Averment, &c. 241

An Administrator in *Banco Regis* pleads in *Bar* a Judgment upon a Verdict, at the *Nisi prius* at *Westminster*; *Repl. Per nultiel Record; secundum Vidian. Vide postea.* 242

Debt against an Administratrix upon a Recovery in the Common Pleas against her



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Intestate. The Defendant confesses the Judgment and Affirmance of it in Error, and pleads that the Plaintiff brought a *Scire facias* upon the said Judgment, against the now Defendant in the *King's Bench*; *Quer' morat'*; *secundum Co. Ent.*  
 Page 242, &c.

## *Nul tiel Record pleaded.*

- In Debt, Bar per *Nul tiel Record' Repl' qd' habetur, Et Certiorari Constabular' un' Quinque portuu'*; *secundum Rast.* 246
- Bar in Debt per *Nul tiel Record' Repl' & Certiorari Camerar' Cestr'*; *secundum Clift.* 248
- Aliter, Et Certiorari, Majori & Ballivis Ville*; *secundum Rast.* 249
- Nul tiel Record* in an Inferior Court pleaded in C. B. *secundum Bro. Vad. Et Repl' quod habet.* 250
- Aliter in Cur' inferior.* pleaded in B. R. *secundum Thomp. Ent.* 251
- Non dampnificat'* pleaded to a Counterbond, *Repl'* by a Recovery in London, *Rejo. by Nul tiel Record' Surrejo' quod habet' Et breve agard Majori*; *secund. i Brown, &c.* 252
- Nul tiel Record' Bille in B. R. Repl' quod habet' Et dies dat' ad audiend' Judic' super Exit' ill'*; *secund. Thomp. Ent.* 253
- Aliter secundum Rastal, Et quer' liberat' Record' Et Cur' advisare vult.* 254
- Aliter secundum Rastal. Et quer' liberat' Record sub pede sigilli Cans'* 255
- Narr.*

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*Narr' in debito super Recuperation' in B. R.*  
*Bar per Nul tiel Record, &c. Repl. quod*  
*habet' Et Judic' pro Quer' ; secund. Ro-*  
*binson's Ent. Page 256*

*In Debt ; Plaintiff pleads Performance of Co-*  
*venants in an Indenture for Payment,*  
*made after the Bond. Defendant replies*  
*by way of Estoppel, by a Recovery of*  
*the Money in the Common Pleas upon*  
*Verdict, Rejo. by Nul tiel Record' Loque-*  
*le präd. Surrejo. quod habet', &c. secund.*  
*Thomp. 257*

*Bar al' Scire facias Qd' Def. fuit Arrestat.*  
*sur Ca' Sa' & detent. quousque le Debt*  
*fuit satisfie. Repl. per Nul tiel Record'.*  
*Rejo. quod habet. Et dies dat. ad infe-*  
*rend. Record' ; secund. Thomp. 258*

*Nul tiel breve de habere fac' poss. &c. 260*

*Nul tiel Record' Brevis de Elegit & Inqui-*  
*sitione, &c. ibid.*

*Nul tiel Record' de Ca' Sa', &c. ibid.*

*Def. in C. B. placitat' auter Action port. in*  
*C. B. pur le dit transf. Repl. Nul tiel Re-*  
*cord' Rejo. quod habet. Et dies dat' ad*  
*inferend' Record' ; secund. 2 Lut. 261*

*Nul tiel Record recuperation in Cur' Domi-*  
*ne Regine, &c. per Repl'. Nil dic. ad*  
*Repl' Et Judic' pro Quer. 262*

*Nul tiel Record recuperation dampnorum in*  
*Cur' de B. R. ibid.*

*Sur Escape, Nul tiel Record recuperation.*  
*& Commission. Custod' Def. Repl' quod*  
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*C. B. per Repl' Rejo. quod habet. Et Ju-*  
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Debt was brought in the Court of <i>Bristol</i> , upon a Bond for six Hundred Pounds, Defendant pleads a Recovery in the King's Bench upon the same Bond ; and the Plaintiff replies <i>Nul tiel Record, &amp;c. Rejo. quod habet. Et Def. habet Record. Et judic' pro quer. Et Error inde ; secund. 1 Saund. cum Notis.</i>	268, &c.
<i>Recuperac' in Cur' Burgi de Gippo &amp; Execuc. inde placitat. in Bar de debito ; Repl. per Nul tiel Record ; secund. Clift's Ent.</i>	276, &c.
<i>Repl' per Nul tiel Record utlagarie Rejo. quod habet. Et sur failer de Record' Judic' quod respond' ouster ; secund. Co. Ent.</i>	276
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Bar per prior Action depending. Repl. per Nul tiel Record' Rejo. Et Issue Et dies dat' ; secund. Bro, Met.	Page 283
In Debt, placitum quod auter Bill exhibit, fuit pro eisdem offens. in Cur' Scaccar. Repl' per Nul tiel Record. Rejo. quod ha- bet. Et dies dat' ; secundum Thomp.	284
Nul tiel Record Comparencie placitat' per Repl' Rejo. quod habet. Et dies dat' ; secund. 1 Instr. Cler.	285
Aliter sur comperuit in trans. Rejo. quod ha- bet. Et dies dat. secund. Hans. Ent.	286
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Aliter & Attincture.	ibid.
Nul tiel Record confession' Felonie.	ibid.
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Nul tiel Record Convictionis de Recusancia.	ibid.
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Return que il mist le Record.	ibid.
Judgment upon Nul tiel Record quod habet. Record' recuperation' in debito.	290
Quer' profert in Cur' breve de Mittimus cum Record placitat. inclus.	ibid.
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Aliter, Aliter, Aliter, Et Judic' quod sa- tis constat.	ibid.
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<i>Judic' pro quer' ubi non habet. tale Record.</i>	ibid.
<i>Judic' ubi Def. defecit de Record' Loquele.</i>	ibid.
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<i>Aliter quod non habet' record' Comparencie.</i>	295
<i>Record' Finis est prolat' in Cur' Et Cur' advifare vult.</i>	ibid.
<i>Constat quod habet' breve Original.</i>	ibid.
<i>Certificac' irrotulamenti Indentur' per Custod. Rotul.</i>	ibid.
<i>Dies ulterius dat. Def. ex assensu.</i>	ibid.

*Bar sur Recognizance.* 296

The Attorney General declares upon a Recognizance taken in Chancery, to appear before the King and Council, and in the mean Time to keep the Peace. Defendant pleads, That T. assaulted him first, and

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- and thereupon he defended himself against him. *Repl. de injur' sua propr' Et Issue ; secund. Rast.* Page 296
- Defendant pleads a Deseazance by Indenture in Bar of a Recognizance. *Repl. Non solvit secundum Indentur ; secund. 1 Bro.* 297
- Bar al Recogn' per reddidit se ; secund. 1 Bro.* 298
- Nul tiel Record' Recogn' Repl' quod habetur Et dies dat.* 299
- Aliter upon a Scire facias against the Bail, Et Repl. quod habetur, &c. secund. Thes. Brev.* ibid.
- The Bail *sur Recogn'* plead *Nul tiel Record' recuperac.* *Repl. quod habetur, &c. secund. Bro. Vad.* 301
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- Manucaptor' placitant quod null Ca' Sa' fuit pros' versus def. secund. Thomp.* 303
- Aliter* 304
- Scire facias super Recogn' capt. pro Rege coram Justic' pacis & forisfact'. Def. placitat Nul tiel Record' Repl' quod habetur Et dies dat' ; secund. Offic' Brevium. ibid.*
- Intrac' Scire facias versus Manucaptos super querel' remot' è Cur' Burgi de Southwarke, & 2 Nichils Retorn' Et Repl' inde per breve de Errore in B. R. Et dies dat' ad producend' secund. Offic' Brevium.* 306
- Bar*



*Bar' al Bill, &c. en Debt.*

The Plaintiff being the surviving Obligee declares upon a Penal Bill to be paid when the Defendant should be able, Defendant pleads in Bar, *Qd' non est habilis ; secund. Ast. Ent.* Page 308

Debt upon a Bill for Payment of 5 l. to the Plaintiff if he should go, or run with such a Weight, &c. *Bar' quod quer' non ibat, &c.* 298

Debt upon two Bills for Payment of Foreign Money, or Value in *English* Money. *Bar*, That he was at the Fair in *Flanders* ready to pay, &c. *secund. Rast.* *ibid.*

*Bar al Bill per Literam Compositionis ; secund. 1 Brown.* 309, &c.

*Bar in Debt, per literam Licenc. placitat' ; secund. Clift.* 314

*Aliter*, The Defendant pleads the Letters of Licence of the Plaintiff, and other his Creditors, and shews he was sued in the *Marshall's Court*, and Removal by *Habeas Corpus ; secund. Thomp.* 316

The Defendant pleads the Statute of Composition for two Thirds in Number and Value ; *secund. Clift. Ent.* 319

*Aliter secundum 1 Lut. cum Demurrer & notis.* 324, &c.

Defendant pleads the Act *Primo Annæ Reginae*, for Relief of Poor Prisoners ; *Et Demurr' inde.* 328, &c.

Defendant

Defendant pleads the Act *Secundo Anna Reginae*, for a Debtor to be discharged upon finding a Soldier, &c. Repl. and Demurrer. Page 334, &c.

Defendant pleads 30 Car. 2. for Relief of Poor Prisoners; Demurrer *cum Notis*; *secund.* Lev. Ent. and Lev. Rep. 342, &c.

A Bar pleaded briefly by a Prisoner; *secund.* Clift. Ent. And the Plaintiff acknowledges the Matter pleaded and prays Judgment according to the Statute, and has it. 334, &c.

Bar al Bill per Agreement quod Def. intraret in Recogn', &c. Demurr' inde; *secund.* Winch. Ent. 347

Bar al Bill Qd' Def. ante Festum seoffavit Quer' de prato per quod quer. eximistavit pratum de bono titulo; *secund.* Placita Gen. 349

Conditions perform' secundum tenorem bille cum deliberatione averiorum cum Incr. vocat' the Stock, &c. Repl' non deliberavit le Stock & Exit'; *secund.* Plit. Gen. *ibid.*

Bar al Bill in Debt per Release de tous Actions; *secund.* Bro. Red. 350

Al Count sur Bill pro 10 l. Bar. per Acquisitionem quod Billa non potuit inveniri. Repl. per non est factum, & Exit'; *secund.* Bro. Red. *ibid.* & 351

Bar in Debt sur Obl'.

Bar per Regalem protectionem sub magno sigillo Angl. fact' al Def. & al pro Anno & die; 2 Brown. Ent. 352

Aliter

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<i>Aliter pro Mercator. &amp; al' qui dampn. &amp; detriment. per naufrag', &amp;c. sustinuer. Et Demurr. inde; secund. Thomp. Repl. quod Literæ præd. non sunt allocabiles in Lege. Rejo. quod sunt allocabiles. Et dies dat. per Cur'.</i>	354, &c.
<i>Aliter secund Clerk's Ass. pro illis in Obsequium Reginae profectur. Et loquel. reman. sine die.</i>	356
<i>Aliter secundum Hans. Ent. Et protectio allocatur.</i>	ibid.
<i>Aliter secund. Eundem.</i>	357
<i>Inrac' Literar' Paten' Protectionis, &amp; allocat' inde; secund. Eundem.</i>	ibid.
<i>Disallocac' Protectionis, secund. Eund'</i>	348
<i>Le Enrie de un' Protect'</i> ; secund. Cl. Ass.	359
<i>Aliter secundum Rast. Ent.</i>	ibid.
<i>Allocac' protectionis; secund. Rast. Ent.</i>	360
<i>Several Actions brought for procuring Protections; secund. Rast. Ent.</i>	ibid.
<i>A Certiorari to know if he is, or was in the King's Service.</i>	ibid.
<i>Protection al Nisi Fri' Et Verdict' prise al peril del Plt. Repl. de Protection, Et le verdict adjudge void; Id.</i>	361
<i>Reattachment &amp; Resummons sur Pretection, &amp; Repl. Id.</i>	ibid.
<i>Un Protection fuit allow, Et mesme le Term un' Innotescimus fuit monstre issint que le protection fuit repel' Et in Mesme le Term fuit agard un' Reattachment; Id.</i>	ibid.
<i>Retorn' del Vic', qd' moratur in Com', &amp;c. Id.</i>	ibid.
<i>Resum' apres Protection, Repl' per Innotescimus quia non profectus, &amp;c. Id.</i>	ibid.
<i>Notes upon Stat. 25. E. 3. Stat. 5, 9. notwithstanding the King's Protection, &amp;c.</i>	ibid. 360
	Bar



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- Bar in debito quod quer' non fuit in Regno*  
*Angl. die solutionis ; secund. Clift. Pa. 360*
- Defendant pleads to a Bond (for Payment of  
 Money, and no Place named where it  
 should be paid) That the Plaintiff was  
 beyond Sea at the Day of Payment, and  
 saith not *uncore prist.* 363
- Bar in Debt sur Obl' per Payment, Condi-*  
*tions perform', &c.*
- Solvit ad diem al Obl' de Payment al. un'*  
*diem, Repl. quod non solvit ; secund. 1 In-*  
*struct. Cler.* 363, &c.
- Aliter* when payable at a certain Place. *Et*  
*Repl. per non solvit, Cl. Aff. Cl. Man. and*  
*Bro. Vad.* 364
- Solvit ad un' Festum, &c. with References.*  
 365
- Qd' solvit ad duos dies, Repl. protestando,*  
*pro placito non solvit ; secund. Rast Ent.*  
*&c.* *ibid.*
- Aliter ad separal' dies cum Repl' Rejunc' &*  
*Exit' ; secund. Rast.* 366
- Aliter ad divers Fours, Id.* 367
- Aliter ad separal' dies secundum Thomp.*  
*Repl' quod non solvit, &c.* *ibid.*
- Aliter quod solvit omnes denar' sum' in In-*  
*dorsamento spec', Repl' protestando, pro*  
*placito non solvit, Rejo. quod solvit &*  
*Issue ; secundum Rast. &c.* 368
- Aliter quod solvit omnes denar' hucusque sol-*  
*vend. Id.* 370
- Aliter al 2 Obl' ove 1 jours de Payment,*  
*secundum 3 Brownl.* *ibid.*
- Simile al 2 Obl' ove 2 jours de Payment,*  
*Repl' quod non, secund. Placita Gen.* 370
- (Part IV.) I i *Aliter*

# The TABLE.

<i>Aliter ad duas Obl' secund. Clift's Ent.</i>	371
<i>Aliter secundum Bro. Red. Et Repl' quod non.</i>	Page 372
<i>Aliter per Payment per Surety plead, Et Repl. non; secund. Rob. Ent.</i>	374
<i>Aliter secundum Thomp. Ent.</i>	375
<i>Aliter ad tres Obl' post Oyer del several Conditions Repl. &amp; tres several Issues sur non solvit severalment; secund. Ast. Ent. i Mod. Intr. and Winch. Ent.</i>	376
<i>Aliter quod solvit ad duos dies Et alter nondum est incurfus; secund. i Mod. Int. &amp;c. Repl' and Issue,</i>	378
<i>Solvit ad duos dies Et antequam resid' fuit debit Quer' exhibuit billam; secund. Bro. Red.</i>	379
<i>Solvit ad omnia Festa præterit'. Et ante Festum M. Quer' original. suum impetra- vit; secund. Cl. Ass. and Hans. Ent.</i>	380
<i>Aliter quod solvit ad Festa, Repl' quod non ad Festa, E. Rejo. quod solvit Et Issue in- de; secund. Plit. Gent.</i>	381
<i>Ad solvend' quer. 20 l. ad finem 3 mensium postquam atting. etat. 21. Bar per Con- dition perform, Repl' non solvit</i>	383
<i>Bar per delivery filiginis &amp; solution. denar' protest. non solvit, pro placito non delibera- vit filiginem, Et Issue secund. Bro. Red. &amp;c.</i>	ibid.
<i>Bar per delivery Hordei ad separal' Fest. Repl' quod non ad Fest. S. Rejo. quod de- liberavit; secundum 2 Brown. Ent.</i>	384
<i>Aliter quod deliberavit bona secundum Condi- tion. Repl. quod non Rejo. &amp; Issue; se- cundum Thomp.</i>	385
I	Def.

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Def. ostend. conditionem & placitat adinde sine  
petition. auditus script. vel Condition. secund.  
Raft. Page 387

Qd' Factor societatis reddit comput. & omnia  
bona & denar', &c. deliberavit Gubernatori;  
secund. Bro. Red. and Read's Dec. ibid.

Similis Bar & Repl que ad receive 7000 l.  
& ne ad pay, Rejo. que il ad receive 500 l.  
& dedit verum computum inde, secundum  
I Lut. ibid.

Qd' curavit Frenesin sed E. per malegestur. in  
diet' relapsus fuit; secund. Rob. and Bro.  
Met. ibid.

Qd' permisit T. & assign' abcarriare lignum.  
&c. Repl' quod non; secund. Rob. Ent.  
ibid.

Qd' ad prox. Cur. Minerii sursum reddidit ad  
usum quer'; secund. Winch. Ent. 388

Qd' inveniebat & providebat sufficien' cibum  
potum, &c. pro ux' & liberis quer'; secund  
I Mod. Intr. ibid.

Condition to expel W. R. Bar Quod expulit  
Repl' quod non. Rejo. & Issue; secund. Clerk's  
Ass. ibid.

Condition to deliver up Articles, Bar quod de-  
liberavit, Repl. quod non, & Issue. idem  
ibid.

Def. al Obl. placitat performac. Officii predica-  
toris, Repl. quod non legebat preces appunc-  
tuat. super Festum Sancti Mich. secundum  
Clift's Ent. ibid.

Condition. de separalibus rebus faciend'. Bar  
quod non dedit Def. sal nitrum, quod Def.  
obtulit deliberare fenum & quer' recusavit ac-  
cipere, & quod quer. non misit def. equum ad  
I i 2 depa-



# The TABLE.

*depaſturand. Repl. quod non obtulit fenum ;*  
*ſecund. Co. Ent.* Page 388

*Conditions perform' de rebus Eccleſiaſticis. 389.*

*Qd' Def. preſentavit quer' ad Eccleſiam, de qua non fuit capax, eo quod fuit Ep'us, &c. demurr' inde ; ſecund. Raſt.* 389

*Quod Archiep. diſpenſavit cum Def. de exhib. Inventorii, quod Ordinarius non limitavit Def. ſolvere aliqua debita Teſtoris & quod perimplevit Teſtum' ; ſecund. Co. Ent.*  
ibid.

*Quod Judex Cur' Prerogative non appunctuavit Def. facere aliquam relaxationem & Demurr. inde, Idem & vide ante.* ibid.

*Quod Def. Excommunicat. fuit & dedit Obl' Ep' pro Cautione parere mandat. Eccleſia & adtunc habuiſſe debuit abſolutionem Et ſemper abinde parat' fuit parere, ſet Ep. recuſavit abſolvere, per quod incapacitat. exiſtit parere. Repl' ſemper parat. abſolutionem dare ſed nunquam requiſit' Et Exit. inde ; ſecund. Clift's Ent.* ibid.

*Bar per delivery & Acceptance des auters choſes. 390, 392.*

Debt upon a Bond of 25 l. with a ſubtle Condition, to avoid the Statute of Uſury. Defendant pleads, that after the Day of Pay-

# The TABLE.

Payment of 14 l. which was to be paid by the Condition, he had paid the Plaintiff 8 l. 17 s. 6 d. and that he and one T. S. had executed a Bond of 20 l. to pay the Plaintiff 10 l. in full Satisfaction and Discharge of the first Bond which the Plaintiff had accepted; *Quer' morat. secund.*

1 *Lut. cum Notis inde.* Page 390, &c.

Plea that the Plaintiff after the Day in the Condition had accepted another Bond in Discharge, *Demurr. inde; secund. 1 Lut.*

391

Executor pleaded a Concord for a Bond to be given by him in Satisfaction of the Bond of the Testator, and Security given accordingly; *Quer' morat' secund. 3 Lev. ibid.*

*Debt sur Obl' Bar quod ante diem in Condict' solvit quer. 30 s. in satisfactione tam debiti petit' quam ovium demand' Repl' quod non solvit in satisfactione, &c. secundum 1 Brownl. and Bro. Red.*

392

*Al Obl' Bar quod Def. ante diem, deliberavit 10 caretat' maeremii in satisfactione denar' Repl' protest. non cogn' aliqua pro placito non recepit in satisfactione debiti; secund. 3 Brownl. ibid.*

*Debt sur 2 Obl' Bar quoad un' quod solvit ad diem, &c. quoad al' qd. deliberavit grana in satisfactione, Et quer' acceptavit, Repl' non solvit denar' Et Issue, protest' non deliberavit grana, pro placito non acceptavit, Et Issue; secund. Rob. Ent. ib. & 393, &c.*

# The TABLE.

*Aliter in Debt sur Obl' Bar quod Def. existen-  
tent' cum T. per Agreement. int. T. & quer'  
predict' T. cum quodam R. deliberaver' al'  
Obl' quer' pro secura solutione, & exoneration.  
al' Obl', qd' quer' accepit, Demurr. inde, idem*

Page 394

*Simil' Bar & Repl' quod R. non deliberavit  
Obl' Et Issue inde; idem. ibid.*

*Debt sur Obl' pro solutione 25 l. Bar quod post  
diem solutionis Def. & un' T. per Bill. pe-  
nal' devener. tent' quer. pro solutione 28 l.  
unde 25 l. fuer. pro eodem debito & 3 l. pro  
dampnis, que quer' in plen. satisfactione script.  
Obl' acceptavit, Demurr. inde secund. Bro.  
Red. ibid.*

*Debt sur Bill, Bar quod ad diem solutione, Def.  
deliberavit quer' sex Vaccas in satisfactione  
Debiti quas quer' acceptavit Repl' quod non  
deliberavit, &c Et Issue inde; secund. Bro.  
Red. & i Brownl. ibid.*

*Debt sur Obl' ove Conditione quod A. & J. sol-  
verent quer' pro usu H. 36 l. ad diem Bar  
quod H. posuit se Apprentic' al J. per In-  
dentur' pro septem Annis Et quod J ante  
diem solutione & finem Termini exoneravit  
H. de servitio pro resid' Termini & delibera-  
vit H. Indentur' ejus in plen' satisfactione  
pred' 36 l. quam H. acceptavit. Demurr. inde;  
secund. Winch. Ent. ibid.*

*Pro secura solutione Def. dedit Obl' ; secund.  
Cl. Ass. ibid.*

*Quoad mutuat' non debet Et quoad resid' quod  
quer' acceptavit duo script' Obl' in plen' sa-  
tisfactione resid' Debiti, Et Exit' quod non  
accepit; secund. Rob. Ent. 395*

Sur



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*Sur mutuat', Bar quod quer' acceptavit de Def. Jocale in Satisfaction' debiti. Repl' quod recepit Jocale pro pignore, Et traverse quod recepit in Satisfaction' Debiti; secundum 3 Brownl. & Bro. Red.* Page 395

*Bar al Obl' per tender & uncore prist; referred to the Third Part of Instr. Cler. Tit. uncore prist, &c.* ibid.

*Bar per Release & Acquittance. 395.*

Many Books referred to. ibid.

*Repl' quod relaxatio fuit rasat' in Dar' ejusdem'; secund. Hanf.* ibid.

*Release plead post ult' Continuance; secundum Clift & al.* 396

Three Obligors, one dies, the other two bring Debt, Defendant pleads the deceased released him of all Actions; *secund. Bro. Met.* ibid.

Defendant pleads a Release to the other Obligor, who was bound in the same Bond; *secund. 2 Mod. Intr & Bro. Vad.* ibid.

*Solvit denar' ante diem Orig', Et quer' dedit relaxationem. Repl' non est factum; secund. Cl. Aff.* ibid.

*Def. placitat literam Licenc' Creditor' in natura Relaxationis; secund. Thomp. Clift. & al. Vide ante 314, 516, &c.* ibid.

*Note, Upon a Bond with Codition to pay at the Defendant's House upon ten Days Notice, Defendant pleads that the Plaintiff did not give him Notice. Repl. That the De-*  
I i 4
fendant

# The TABLE.

Defendant paid not the Money on the 11th Day of March, according to the Condition, *Et quer' moratur*; secund. 1 Lut. cum Notis. Page 397, &c.

Bond for Payment of Law Charges. Bar qd' solvit Repl' quod non Def. Demurr'; secund. 1 Lut. cum Notis. 399, 400, &c.

Bond to pay what the Plaintiff should make appear to be due. Bar, That he had not made appear any Sum was due to him. Repl' by an Account, and found in Arrear 310 l. and Defendant had not paid one Moiety, &c. Defendant demurs; secundum 1 Lut. cum Notis. 402, &c.

Debt sur Obl' Bar per Acquittanc' Et Repl' non est factum; secund. Bro. Rep. & al' 404

Al' resid' debiti Def. placitat Acquietanc' Special' sub sigillo Quer' Et Quer' Demurr'; secund. Winch. Ent. ibid.

Debt de 220 l. per Obl' Bar per Acquietanc' de 100 l. parcel Repl' quod fecit Acquietanc' de parte al. Debiti per Obl' Rejo. quod fuit pro parte Debiti petit'; secund. Placit Gen. ibid.

Debt sur Bill' Bar per Acquietanc' mentionan' quod billa non potuit inveniri, cum Averment quod est eadem. Repl. per non est factum; secund. Bro. Red. 405

# The TABLE.

*Bar per Defeazance. Page 405.*

<i>Bar per Defeazance per Indentur' ; secundum</i>	
<i>Thomp. &amp; al',</i>	<i>ibid.</i>
<i>Aliter; secund. Raft.</i>	<i>ibid.</i>
<i>Aliter a payer a divers jours. Et quod solvit.</i>	
<i>Repl' &amp; Issue ; secund. Raft. &amp; al.</i>	406
<i>Bar by a Defeazance the same Day and Year,</i>	
<i>to produce Witnesses to make Proof of a</i>	
<i>Debt, and avers he did not produce Wit-</i>	
<i>nesses ; Et Quer' moratur ; secund. 2 Saund.</i>	
<i>cum Notis.</i>	408, &c.
<i>Further Notes and Observations as to Pleas of</i>	
<i>Conditions performed.</i>	409
1. By Payment.	<i>ibid. &amp;c.</i>
2. By Delivery of the Corn or Goods.	410
3. By Concord and Acceptance of other	
Things.	411, &c.
<i>Where no Time of Payment is limited.</i>	
	414
<i>Where Place of Payment is limited.</i>	415
<i>Where no Place is limited.</i>	<i>ibid.</i>
4. By Tender.	416, &c.
5. Release and Acquittance.	419, 421
6. Defeazance, &c.	422

*Bar*



# The TABLE.

*Bar al Obl' sur Counterbond. Page 423.*

- Ad indempn' conservand' quer' a Script' Obl' fact' Regine pro vera executione Offic' Feodarii. Def. plede le primer Obl' al Roigne, Et quod performavit omnia in Conditione, Et sic non dampnificat', Et Quer' moratur; secund. Winch. Ent. 423*
- Ad indempn' conservand' Quer' ab Articulis int. J. & un' H. Bar quod Articuli fact' fuer' pro solutione denar' per J. al H. quos J. solvit, Et sic quer. non est dampnificat'. Quer' demurr'; secund. eund. Winch. ibid.*
- Qd' Def. solvit denar' ad diem Et sic indempn' conservavit quer.' Repl. non solvit & Issue; secund. Thomp. ibid. & 424*
- Aliter, secund. Bro. Red. Repl' Rejo. & Issue. 425*
- Aliter, secund. eund. Repl' & Exit'. 426*
- Aliter, secund. eund. Repl' & Exit'. ibid.*
- Aliter, per Adm. Repl' Rejo. & Exit' secund. eund. & al'. 428*
- Aliter, secund. Placit' Gen. & al'. 429*
- Non dampnificat' per 3 scripta spec. in Conditione nec per eorum aliquod nec sectam in Lege superinde; secund. Hern. ibid.*
- Qd' Creditor obtinuit Judic' versus Quer' in B. R. Et Def. super requisit. quer. solvit denar' in exonerac' Judicii, Et Demurr' inde; secund. Co. Ent. ibid.*
- Bar per Conditions perform' Et issint non dampnificat' Repl' per nient perform. del Condition' 429*

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on<sup>r</sup> d'un des 12 Obl' Spec. in le Bar ; secund.  
Read's Dec. Page 429

Al Obl' Jur Repl' Bar quod Def. prof. fuit Quer-  
relam nondum adjudicat. Et quod Quer' non  
est dampnificat'. Secund. Clift. 430

Breach qd' dampnificat' per Sect' in Lege, &c. ib.  
Bar per non dampnificat' Repl' quod denar'  
fuer. insolut. & Obligee fait Exec. qui ar-  
rest' quer' per Latitat & detinuit quousque  
solvit denar' cum mis. Demurrer inde ; secund.

3 Brownl. &c. ibid.

Similis Bar, Repl. quod denar' fuer. insolut. &  
Obligee prosecut. quer. sur Script. al. ex. fa' ;  
secund. 1 Mod. Intr. ibid.

Similis Bar, Repl. quod denar' fuer' insolut. &  
Obligee conabatur arrestare Quer' per quod  
quer. circa negotia sua licita ire non aude-  
ret, Et sic dampnificat' Rejo. quod non ha-  
buer' notic. Et quer. moratur ; secund. 1  
Saund. cum Notis. 413, 430, &c.

Bar quod nulla requisit' seu noticia in Scriptis  
fact'. fuit ad indempn' custodiend' ; secund.  
Clift. & al'. 436

Bar per non dampnificat'. Repl' quod denar.  
fuer insolut. Per quod Obligee minabatur &  
conabatur arrestare quer. per quod quer' illos  
ei solvit & sic dampnificat ; secund. Ast. Ent.

437

Non dampnificatus. Repl'. the Money was  
not paid per quod quer' fuit onerabilis &  
non ausus negotiis attendere, &c. Rejo.  
That the Money was tendred and refused,  
and traverses that the Plaintiff was charge-  
able, and able, & Quer' demurr. ibid.

Non dampnificat' Repl' quod denar' fuer. insolut.  
Et quer' pro evitacione Sect. & Incumbranc.  
solvit

## The TABLE.

- solvit denar' al Obligee Et sic dampnificat'*  
*Rejo. & Issue quod non solvit. Page 437*
- Similis Bar, Repl' quod Obligee recuperavit Ju-*  
*dic' vers. Quer' sur Obl' in Cur' Vic. Lon-*  
*don, Et sic dampnificat'. Rejo. per nul tiel*  
*Record. Surrejo. Qd' habetur & Breve ad cer-*  
*tificand' Record. agard ; secund. 1 Bro. ibid.*
- Similis Bar, Repl' per Judic' recuperat. vers.*  
*Quer' in Banco Regis. Rejo. quod Judic' ob-*  
*tent. fuit per fraudem ; secundum Thomp.*  
*ibid.*
- Repl' quod N. in Com. Banco recuperavit, 37 l.*  
*pro dampn' vers. Def. Et Quer' existen' ejus*  
*Manuapt', N. prosecut' Sci' fa' vers. Quer.*  
*& habuit Judic' & sic quer. dampnificat' ;*  
*secund. Thomp. cum Notis. 438*
- Bar per non dampnificat. Repl' per Process. in*  
*Cur. Stannar. & Quer. Manuapt. super*  
*quo solvit denar. pro evitacione custag', &c.*  
*secund. Winch. Ent. ibid.*
- Quer' dampnificat. fuit per Relaxationem dat',*  
*&c. secund. Winch. Ent. cum Notis. ibid.*
- Non dampnificat' pleaded to his Bail. Repl.*  
*he did not appear, and therefore the She-*  
*riff prosecuted the Plaintiff, &c. 439*
- Defendant pleads he kept his Bail harmless by*  
*Payment of the Money ; Et Judic' pro quer.*  
*ibid.*
- Bar per non dampnificat. Repl' quod Feme Ob-*  
*ligee prist Baron, Et puis ils sue Orig. &*  
*Casur Obl' per quod Quer' pro exoneratione,*  
*&c. expendidit 30 s. Rejo. quod Def. post O-*  
*rig. & Ca. solvit tot. Debitum, &c. Et tra-*  
*verse quod quer. expend' 30 s. Et Issue inde*  
*tender*



# The T A B L E:

tender sed Def. nichil dic' ; secund. Bro. Red.  
& al. Page 439, &c.

Similis Bar, Repl' quod denar. fuer. insolut. ad  
diem, Et quer' coactus fuit solvere. Rejo.  
protest', &c. Pro placito, quod Obligee ante  
diem relaxavit Def. Demurr. inde ; secund.  
Bro. Red. ibid.

Similis Bar, Repl' quod Def. ut Collector Red-  
dit' spectan' Gubernator. & Societat' Novi  
Rivi recepit denar' & non solvit Thesaura-  
rio. Et quer' coact' fuit ad solvend'. Def.  
moratur in Lege ; secund. Bro. Red. cum No-  
tis. ibid. &c.

De indempn' conservand' ab Infante, &c. 444.

Conditio de Paroch' indempn' conservand' a  
Spurio. Bar per non dampnificat. Repl' quod  
per Ordin' Justic' Inhabitantes fuer' one-  
rat' Demurrer inde ; secund. Winch. Ent.  
ibid.

Similis Conditio. Def. plead Letters Patents  
pur le Incorporation de Bridewell, Et que ne  
appiert que les dits Gōvernors ount poyer a  
prendre ou fuer tiels Obl' ; Et Demurrer  
inde ; secund. Winch. ibid.

Non dampnificat' to a Bond concerning a Ba-  
stard-Child. Repl. by Churchwardens who  
shew 4 s. Damage. Rejo. That he would  
have provided, but they would not permit  
him, but put the Child to Nurse against his  
Will. Demurrer, cum Notis ; secundum 1  
Saund. 445

*Aliter*

## The T A B L E.

- Aliter* concerning a Bastard - Child ; Notes therein ; *secund.* Noy. Page 445
- Aliter*, *secund.* March. 446
- Non dampnificat' ad Specialem Conditionem.*  
*Repl' protest' quod' non indempn' conserva-*  
*vit, pro placito quod quer' disposuisset & sol-*  
*visset pro propr' usu G. Fil' Def. 100 l. quas*  
*Def. non resolvit. Et sic dampnificat'. Issue*  
*quod solvit ; secund. 1 Mod. Int. ibid.*
- Non dampnificat' concerning placing A. in a*  
*Cottage, &c. secund. 1 Keb. ibid.*
- Non dampnificat' to a Condition for saving*  
the Plaintiff harmless, as being Bail for  
one L. at the Suit of W. *Repl.* shews that  
W. had a Judgment against L. and died  
Intestate, and Administration to J. that L.  
had not pay'd the Money recovered, but  
that the Plaintiffs had paid it to the Admi-  
nistrator. Defendant demurs, *cum Notis ; se-*  
*cund. 1 Lut. 447*
- Bar, That he had saved the Plaintiff harmless  
concerning certain Mariners Tickets deli-  
vered to the Defendant. *Repl.* he was  
arrested and paid 20 s. *Rejo.* That he fals-  
ly procured himself to be arrested, and  
traverses *Aliter, &c. Quer. moratur ; secund.*  
*1 Lut. cum Notis. ibid.*
- Non dampnificatus to a Bailiff's Bond, who*  
had delivered Goods levied to the Defen-  
dant. *Repl. & monstre coment. Def. demurr' ;*  
*secund. 1 Lut. cum Notis. 436*
- Debt on Bond to pay the Plaintiff 10 l. Pro-  
vided she saved one T. S. harmless, &c. by  
reason the Plaintiff was with Child. Bar,  
That she the Plaintiff swore before a Justice,  
that

## *The T A B L E.*

that *T. S.* was the Father, for which *T. S.* was taken and forced to find Bail. Repl. The Plaintiff was delivered of an Infant, which was a Bastard begotten by *T. S.* and that *T. S.* was not damnified by reason of maintaining the said Infant. *Def. moratur ; secund. i Lut cum Notis.* Page 444

Other Observations on Counterbonds. 450,  
451, &c.

Observations concerning Sureties, &c. 452

References to many Actions, &c. to save Sureties harmless, &c. *ibid.* &c.

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## *F I N I S.*





